RNI No. MAHBIL /2009/31744
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महाराष्ट्र शासन राजपत्र

भाग एक–ल

वर्ष ६, अंक ११] गुरुवार ते बुधवार, मे २२-२८, २०१४/ज्येष्ठ १-७, शके १९३६ [पृष्ठे ४०, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील (भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त) अधिसूचना, आदेश व निवाडे.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) Nos. 178 OF 1992 and 208 OF 1992.—(1) The Divisional Controller, Maharashtra State Road Transport Corporation, Sangli Division, Sangli, (2) Senior Security Officer, M.S.R.T. Corporation, Sub-Regional Office, Sholapur.—*Petitioners* (Respondent in Revision Appln. (ULP) No. 208 of 1992)— *Versus* — Shri Vasant Sakharam Kuwar, At post Nakane, Tal. and Dist. Dhule.—*Respondent* (Petitioner in Revision Appln. (ULP) No. 208 of 1992).

In the matter of Revisions u/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri A. N. Kulkarni, Law Officer for Petitioners.
Shri M. D. Wagh, Advocate for the Respondent.

Judgment

These Revisions are arising out of judgment and order passed in Complaint (ULP) No. 189 of 1990 by Labour Court, Sangli whereby an employer is directed to reinstate his employee with continuity of service but without back wages by stoppage of two increments permanently.

2. Revision Application (ULP) No. 178 of 1992 is preferred by the employer challenging entire decision whereas Revision Application (ULP) No. 208 of 1992 is preferred by the employee challenging punishment of withholding two increments permanently.

3. Admittedly, the Petitioner of Revision Application (ULP) No. 208 of 1992 who is Respondent of Revision Application (ULP) No. 178 of 1992 (hereinafter referred to as the Complainant) was in employment of Respondent of Revision Application (ULP) No. 208 of 1992 who is Petitioner of Revision Application (ULP) No. 178 of 1992 (hereinafter referred to as the Maharashtra State Road Transport Corporation) as Watch and Ward Inspector since many years. The Corporation served chargesheet dated 26th April 1988 upon him under items 10 (indiscipline) and 29 (insolance, impertinance or rude or uncivil behaviour) towards any employee

or when on duty of its Department at appeal procedure) mainly alleging that he visited Corporation's premises on 1st February 1988 at about 7-30 p.m. after consuming and under influence of liquor and then abused Officers of the Corporation. The Complainant denied the charges and then an enquiry took place. The Enquiry Officer held that both charges are proved. Ultimately, the Complainant was dismissed from service by order dated 19th April 1990.

4. The Complainant then filed above Complaint on 24th April 1990 alleging that he left Corporation's premises on 1st February 1988 at 5-30 p.m. after performing usual duties, came home and then consumed a little liquor to mitigate his mental agony. He holds a permit for consumption of liquor. He then went to Divisional Office to meet Security Officer Shri Kadam but Shri Kadam was not in the office. He then returned quitely to home. It is further alleged that he is active union member, the Corporation was annoyed about his organisation of Maharashtra Motor Kamgar Federation and hence issued false and bogus chargesheet alleging false charges of misconduct. The enquiry was simply a force and one-sided. Principles of natural justice were altogether violated while conducting the enquiry. As such, findings thereof are perverse. It is further alleged in alternate that punishment of dismissal is shockingly disproportionate. Finally, it is alleged that the dismissal is an unfair labour practice under various clauses of item 1 of Schedule IV of the M.R.T.U. and P.U.L.P. Act.

5. The Complainant also made an application under section 30(*2*) of the M.R.T.U. and P.U.L.P. Act alongwith the complaint to allow him to join duties till decision of main complaint. Learned Labour Court passed an *ex-parte* order on 24th April 1990 itself directing the Corporation to allow the Complainant to join duties until further orders.

6. The Corporation filed its say cum written statement at Exh. C-3 and traversed all material allegations made by the Complainant. It firstly contended that the Complainant is not a workman as defined under section 2(s) of the I. D. Act and cannot resort to provisions of the M.R.T.U. and P.U.L.P. Act. According to Corporation, the enquiry is fair and proper, sufficient opportunity was given to the Complainant in the enquiry and findings are well justifiable. In fact, the Complainant has admitted the guilt on 3rd February 1988. It is further case of the Corporation that proved misconducts amount to in sub-ordination and are serious one. He was punished in the past for severe misconducts but did not improve even thereafter. As such, punishment of dismissal is well justifiable. Thus, the Corporation justified its action and prayed for dismissal of the complaint.

7. Interim application (Exh. U-2) and main complaint were ordered to be heard together, as per pursis (Exh. C-5) by the Corporation. The parties then went to the trial. None of them led oral evidence. The Corporation produced entire enquiry papers, with list Exh. C-4.

8. Learned Labour Court on perusal of evidence and hearing both parties, held that enquiry is fair and proper and the findings are not perverse. It then held that punishment of dismissal is shockingly disproportionate and withhelding two increments permanently will be a proper punishment. Ultimately, it allowed the complaint as above by judgment and order dated 17th August 1992. The same is challenged in these Revisions.

9. Now following points arise for my determination :—

(*i*) Whether impugned judgment and order is legal and proper ?

(*ii*) What order ?

10. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) Both Revision Applications are dismissed.

11. This being a Revision under section 44 of the M.R.T.U. and P.U.L.P. Act, it is not necessary to scruitnise the rival contentions meticulously. The only material question is whether documents on record are incapable of supporting impugned order. In other words, whether impugned order is perverse or justifiable ?

12. I must state at the outset that there are no sufficient grounds in the Revision Application of the Complainant regarding alleged perversity of findings of the Enquiry Officer. Even then, on perusal of discussions of Learned Labour Court, I find that factual findings that enquiry is fair and proper and findings are not perverse are well justifiable. The Complainant has admitted the guilt in his statement dated 3rd February 1988. In addition, witnesses examined in the enquiry have deposed against the Complainant. I, therefore, find that findings of the enquiry officer are well justifiable and rightly endorsed by the learned Labour Court.

13. Shri A. N. Kulkarni, learned Law Officer for the Corporation vehementaly argued that the Complainant was working as Security Officer and his rude behaviour under the influence of liquor amounts to insubordination and has spoiled corporation's image to a great extent. Therefore, proved misconducts cannot be said to be minor or technical one. He then added that the Complainant was temporarily reinstated by virtue of interim *ex-parte* order but dismissed after 7/8 years for some other misconducts and now is not in service.

14. Shri Wagh, learned Advocate representing the Complainant replied that the Complainant had been to the Division Office for urgent work but did not assault any of the employees. Punishment of permanantly withholding two increments is practically major one as it has resulted into substantial pecuniary loss to the Complainant. At the most, the increments ought to have been withheld temporarily for a temporary period.

15. It is not in dispute that the Complainant was allowed to join duties as per interim order of learned Labour Court. Thus, he continued to be employment and was out of employment for a couple of days. Eventually, question of granting back wages does not arise at all. The Corporation has not produced his past record. But it appears that he was serving since many years. According to him his past record is good. Now he is dismissed for some other misconducts after 7/8 years. In such circumstances, I find that punishment of withholding two increments permanently is well commensurate for the proved misconducts. Accordingly, I answer Point No. 1 in the affirmative and pass following order.

Order

(*i*) Both Revision Applications are dismissed.

(*ii*) Copy of this judgment be kept in other Revision Application.

(*iii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
dated the 28th August 2002.

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BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 62 OF 2000.—Shri Suresh Manilal Shah, 610, E-Vardhaman Chambers, Shahupuri, 2nd Lane, Kolhapur.—*Complainant—Versus*—Kothari Industrial Corporation Ltd., Konark Center, Part A, 205-E, Tarabai Garden Road, New Shahupuri, Kolhapur. Through Dy. General Manager (per Admn. and legal).—*Respondent.*

In the matter of Complaint u/s. 28(1) read with items 3, 9 and 10 of Schedule IV of the M.R.T.U. and P.U.L.P. Act.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri D. S. Joshi, Advocate for the Complainant.
Shri A. S. Nevgi, Advocate for the Respondent.

Judgment

This is a complaint purported to be under Section 28(*1*) read with items 3, 9 and 10 of Schedule IV of the M.R.T.U. and P.U.L.P. Act.

2. Admittedly, the Complainant joined the Respondent (hereinafter referred to as the Company) as a clerk with effect from 1st June 1976. The Company then confirmed him by letter dated 7th December 1976. It is stated in the confirmation letter that his services are liable to be transferred to any company/Unit/Depot in which Directors of the Company are directly interested. The Company deals with sale of tea, fertilisers, leather goods etc. and has number of branches all over India, having one such Branch at Kolhapur.

3. It is alleged by the Complainant that the Company sells huge quantity of tea through its Kolhapur Branch. One Mr. P. G. Bagalkote is Company's Agent at Kolhapur. It is case of the Complainant that the company diverted its entire sale of tea at Kolhapur through Mr. Bagalkote— from the accounting year 1998-99 whereby entire staff of Kolhapur Branch became idle. Company's such act has adversely affected service-conditions of its employees and further is contrary to mandatory provisions of Section 9A of the I. D. Act. Act of changing the nature of business in such a way is nothing but a rationalisation of business technique, whereby staff of Kolhapur Branch has become surplus and it will finally lead to a retrenchment.

4. The Company called all staff members of Kolhapur Branch, except the Branch Manager, at Chennai (Madras) in December, 1999 for discussions and they were informed that Kolhapur Branch will be closed and employees working thereunder will be transferred.

5. It is alleged by the Complainant that he and other staff members of Kolhapur Branch informed the Company by letter dated 12th January 2000 that diversion of sale to Shri Bagalkote will adversely affect the Company and hence proposal of closing down Kolhapur Branch be reconsidered. But there was no response on Company's part. In fact, direct sale of tea through Kolhapur Branch will improver the sales.

6. The Company, then transferred the Complainant *vide* letter dated 21st January 2000 to Belgaum with effect from 3rd February 2000. It is stated in the transfer order that business through Kolhapur Branch has drastically came down, operations of Kolhapur Branch have become economically unviable and therefore, all employees from Kolhapur Branch are transferred to other places.

7. It is further alleged by the Complainant that he is working in clerical grade and is transferred out of State. His wage-scale is unilaterally restructured and it is tried to be shown that he will be getting higher salary. The Company has no right to transfer him nor any rules are framed regarding the transfer. Besides, company Belgaum Branch is established after he joined the company and hence he cannot be transferred out of State to Belgaum.

8. The Complainant has further came with a case that he has collected deposits from the public through the Respondent Company for Kothari Oriental Finance Company Ltd. However, the deposits are not re-paid as per the schedule. Depositors are now threatending him with dire consequence. As such, his transfer will be troublesome to him as well as the Company. It is further alleged that there is no post of Clerk *cum* Typist and he is foistered at Belgaum Branch. In fact, business at Kolhapur Branch has no where come down drastically but is made through Agent Shri Bagalkote. The transfer are made for getting rid of the employees and renewal of license under the Bombay Shops and Establishments Act show that the Company is going to continue the business through the Agent. In addition, the Complainant has put forth his personal difficulties to work at Belgaum. According to him his children are studying at Kolhapur with Marathi Medium School and no such School is available at Belgaum. Besides, the transfer is mid-term transfer.

9. On above averments, the Complainant has prayed for requisite declaration of unfair labour practice, setting aside transfer order dated 21st January 2000 and other consequantial reliefs.

10. The Complainant also made an application under section 30(*2*) of the M.R.T.U. and P.U.L.P. Act, alongwith the complaint to stay execution of the transfer order, till decision of main complaint.

11. The Company filed its written statement at Exh. C-4 and traversed some of the material allegations made by the Complainant. It contended at the outset that it mainly deals with textile, tea and fertilizers and was required to sale textile business and part of the tea plantation due to recession and other verious problems. As such, working of Kolhapur Branch was adversely affected and practically there was no activity through Kolhapur Branch since last two years. Even then it paid full wages to employees of Kolhapur Branch. During the period of two years, office was totally closed for 6 months and the employees were never called for work. Even then, they were paid wages. Normal business was expected from Kolhapur Branch but such possibility became very remote. Ultimately, all employees were called for discussions at Chennai. All their expenses including of accommodations were borne by the Company. In the meeting, they were informed that they will be transferred from Kolhapur. The Complainant was informed that he will be transferred to Tirunelveli but was posted at Belgaum on his request. Moreover his emoluments at Belgaum are increased by Rs. 1,064 per month due to revision of pay-scale. Other three employees were also transferred alongwith the Complainant but they have not challenged their transfer. As such, there is no unfair labour practice while transferring him.

12. It is further case of the Company that the Complainant was made permanent *vide* letter dated 7th December 1996 which says that his services are transferrable. As such, he was not appointed for Kolhapur Branch only and his transfer is an incident of service.

13. It is further case of the Company that Dealer *cum* Selling Agent Shri Bagalkote is working from the year 1965 and looks after the sale of tea in Kolhapur, Pune, Satara and Sangli and Ratnagiri Districts. Kolhapur Branch used to look after textile, other business and administration. As such, question of changing service condition of the employees in violation of provisions of the I. D. Act, does not arise. The transfer is not adversely affecting the Complainant and there is no question of rationalisation and requirement of giving notice of change.

14. The Company has further come with a case that there was a Branch Manager, Junior Officer, Clerk and attendant at Kolhapur Branch. None of the employees were appointed for sale of tea. Branch Manager is used to look after the sale and the Office staff was never involved in sale transaction of tea. In fact, Dealer *cum* Selling Agent is functioning not only prior to employment of the Complainant but even prior to establishment of Kolhapur Office. As such, averments of changing business technique or taking the decision affecting the service conditions of the employees are false. The Complainant is transferred for business reasons but

his service-conditions are same. It is also contended that alleged rationalisation is not likely to lead to retrenchment of workmen and hence item 10 of Schedule IV of the M.R.T.U. and P.U.L.P. Act is not attracted. Apprehension of closing the Branch is also baseless. Besides, Branch Manger of Kolhapur Branch will be retained and the Branch will not be closed. In fact, the company is functioning since 60 years, has turnover of 100 crores and the decision to transfer the employees is taken after considering all busniess possibilities.

15. As regards existance of the Belgaum Branch, it is case of the Company that said issue is relevant as the company has right to transfer its employees. The Complainant will not be surplus and it not foistered on Belgaum Branch. In short, it is case of the Respondent that decision to transfer employees from Kolhapur Branch, is taken in good faith and due to recession. It nowhere amounts to likelihood of retrenchment. Other employees transferred from same branch have nowhere complained and transfer is incident of service. As such, there are no *malafides* whatsoever. Finally, it prayed for dismissal of the complaint.

16. Considering rival pleadings, following issues arise for my determination :—

(*i*) Does the Complainant prove that he is *malafidely* transferred under the guise of following management policy ?

(*ii*) Whether Complainant's transfer is in violation of Section 9-A read with item 10 of I. D. Act ?

(*iii*) Whether it is proved that Belgaum Branch was in existance prior to Complainant's appointment ?

(*iv*) Whether the Complainant has further proved that his transfer to Belgaum Branch is contrary to service conditions ?

(*v*) Whether the Complainant has proved that the company has engaged in unfair labour practices under items 3, 9 and 10 of Schedule IV of the M.R.T.U. and P.U.L.P. Act ?

(*vi*) What order ?

17. My findings, on above issues, are as under :—

(*i*) No.

(*ii*) No.

(*iii*) Yes.

(*iv*) No.

(*v*) No.

(*vi*) The Complaint is dismissed.

Reasons

18. It needs to be stated, at the outset that the Complainant made an application (Exh. U-2) under section 30(*2*) of the M.R.T.U. and P.U.L.P. Act to stay execution and operation of his transfer order, pending the hearing and final disposal of main complaint. It was rejected on 8th January 2002. The Complainant challenged said order before Hon'ble High Court, *vide* Writ Petition No. 2477 of 2001. It was not pressed with the submission of expeditious trial of main complaint. Eventually, the Writ Petition was disposed off with a direction to decide main complaint within one year.

19. It has also come on the record that the Complainant, in the past, filed 10 to 12 Complaints against the Company pertaining to deduction of his wages for refusal of leave with pay, non-payment of over-time wages and grant of equal wages like paid to staff of Chennai (Madras). However, no complaints are filed in last 5 to 6 years except one of claiming overtime wages. It has further come on record that he was served with a Chargesheet alleging that he sells and no-arranges Railway Tickets during duty hours, was suspended, pending an enquiry, and then was taken on duty. It is also an admitted position that five other employees working with Kolhapur Branch are transferred alongwith the Complainant and none of them have challenged their transfers nor they are terminated. Besides, about 10,000 employees are working under the Respondent Company.

20. The Complainant has produced various documents with list Exh. U-6. Many of them pertain to period prior to November, 1997. Admittedly, all employees of Kolhapur Branch were called to Chennai (Madras) and were orally stated on 24th November 1999 that Kolhapur Branch will be closed and all of them will be transferred. The Complainant and other employees sent letter dated 12th January 2000 to the Company stating that entrustment of entire work to contractor Shri Bagalkote under the guise of an Agent has resulted into their idleness and profitability of the Company is also adversely affected as Contractor Shri Bagalkote has reduced the sales by 50% during the last two years. It was further alleged that such act will result into closure of Kolhapur Branch and then their transfers. Eventually, it was requested that the Company should withdraw the illegal system and entrust the work to them, as before. The Company gave reply dated 28th January 2000 stating that the Agent is appointed long back, no contract system is introduced by entrusting permanent nature or work. However, no work is available at Kolhapur and the staff has to be transferred. The Complainant has produced unauthenticated copies of month-wise and year-wise sale of tea and amount of sales-tax paid.

21. I must state at this stage itself that the Complainant has affirmed in his affidavit Exh. U-19 (filed in lieu of examination-in-chief) that details thereof are correct. He has also filed an affidavit (Exh. U-18) on 13th November 2000 regarding sales for the period March to September, 2000 and amount of sales-tax paid thereof as well as another Affidavit dated 20th April 2000 (Exh. U-15) about similar details for December, 1999 to February 2000. By such affidavits, the Complainant wishes to establish that sale at Kolhapur is nowhere reduced.

22. Shri Joshi, learned Advocate representing the Complainant vehementaly argued that charts showing sales and payment of sales-tax thereof for the period prior to the transfer are proved by the Complainant, by above affidavits and there is no suggestion whatsoever to the Complainant that those are false. In addition, there are no suggestions whatsoever to the complainant that those are false. In addition there are no suggessions even remotely to the Complainant that those figures are false. Company's General Manager - Ramkumar is unable to give details of tea sales. As such, the charts totally falcify plea of the Company.

23. Shri Nevgi, learned Advocate representing the Company filed written arguments (Exh. C-33) as well as made oral submissions. He submitted that alleged charts of alleged sales and sales-tax are computerised one, do not bear signature or authentication of Company's any Official or Branch Manager and therefore, cannot be said to be proved or allowed to go in evidence. Besides, source thereof is not explained by the Complainant.

24. It is interesting to note that alleged charts and details thereof are without any authentication. As such, genuineness thereof is untrustworthy. Mere affirmation of the Complainant, in such circumstances, does not prove correctness of particulars therein. Eventually, those cannot be read in evidence and have no evidentiary value in the eyes of law. With such observations, I proceed further.

25. Advocate, Shri Joshi, in the second phase, argued that the Complainant is not transferred on account of administrative exigencies and therefore, burden lies upon the Company to justify grounds stated in the transfer order. He pointed out that transfer order dated 17th January 2000 was inclosed alongwith the chargesheet but transfer order dated 23rd August 2000 is another one. Thus, two transfer orders are well indicative of mischief and *malafides*.

26. Advocate, Shri Nevgi replied that contents of both transfer orders are materially the same. Even then the Complainant was informed to ignore transfer order dated 17th January 2000 and accordingly it is affirmed by General Manager Shri Ram Kumar in his affidavit Exh. C-21, in lieu of examination-in-chief.

27. On perusal of both transfer orders, I do not find any material inconsistancy between the reasons thereof. In both transfer orders, same grounds are putforth. As such, two transfer orders do not automatically make the transfer *malafide* one.

28. The Complainant has affirmed in his affidavit (Exh. U-19) that the Company has diverted entire sale of tea from accounting year 1998-99 through Mr. Bagalkote and now entire staff of Kolhapur Branch is not at all involved in said transaction. Such change in business is rationalisation in business technique, it will adversely affect service-conditions of the employees and such act is in violation of section 9A of the I. D. Act. Company's such act made Kolhapur staff surplus and it will finally lead to retrenchment. It has come in his cross-examination that Kolhapur Branch was closed since six months prior to 24th December 1999, however, all employees were paid wages for such period.

29. Advocate, Shri Joshi argued that there is no satisfying and convincing material on record to show that sale through Kolhapur Branch was adversely affected. On the contrary, now the entire sale is diverted through the Agent and hence reason for transfer is *malafide* one. In fact, Kolhapur Branch was closed for six months due to threats of depositors of Kothari Oriental Finance Ltd. The Transfer is not inherent right of the Company but is governed by Rules and Regulations. For that end he relied on decision in *Group Pharmaceuticals Ltd.* V/s. *Blossom Godinho and Anr. reported in 1997 II CLR at page 911 (Bom. H. C.)* and *Creat Communication Ltd. and Ors.* V/s. *Ms. Sheetal Shenoy reported in 2001 II CLR at page 1036.* As such, unfair labour practice under item 3 of Schedule IV of the M.R.T.U. and P.U.L.P. Act is clearly proved.

30. Advocate, Shri Nevgi replied that Complainant's confirmation letter entitles the Company to transfer the Complainant to any Company/Unit or Depot. Transfer is incident of service and all employees from Kolhapur Branch are transferred. Complainant's main grievance is that the transfer is an illegal change. Agent Shri Bagalkote is working since prior to Complainant's appointment and hence theory of diversion of entire sale through him is incorrect. Other employees of Kolhapur Branch have no where complained regarding their transfers but have joined at the transferred places. Therefore, apprehension of retrenchment is totally unsustainable. Normal orders of transfer are outside the purview of examination by Court of law. It is made crystal clear in the transfer order itself that Complainant's service conditions will not be adversely affected due to transfer. In support of his arguments, he relied on the decisions in *Janata Commercial Co-operative Bank Ltd.* V/s. *Member, Industrial Court reported in 1996 Lab. I. C. at page 2812* and *Rejendra Roy* V/s. *Union of India and Anr. reported in 1993 I CLR at page-5.*

31. In Group Pharmaceutical's case, there was not express term in the contract of service empowering the employer to transfer the services of employee from Mumbai to Bengalore. Relying upon decision of Apex Court in *M/s. Kundan Sugar Mills* V/s. *Ziauddin reported in AIR 1960 S. C. at page 650,* it was held that no implied power of transferring employee from one place to another, can be invoked.

32. In the present case, though there may not be specific rules and regulations of transfer, admitted terms and conditions in confirmation letter dated 7th December 1976 will certainly prevail and the Complainant is Bound by the same. It is specifically stated that services are liable to be transferred to any Company, Branch or Depot, in which Company's Directors are directly interested. In my judgment, therefore, facts in *Group Pharmaceuticals's case,* cannot be applied here. I am respectfully bound by the observations therein. However, employment conditions in confirmation letter dated 7th December 1976 make Complainant's service transferrable. As such, the Complainant is liable to be transferred.

33. The Complainant has himself stated in letter dated 12th January 2000 that tea-sales of the Company are reduced to the extent of 50% during last two years *i.e.* from the accounting year 1998-99. Admittedly, Agent Shri Bagalkote is working since more than 25 years. The Complainant has not raised any grievance regarding alleged diversion of sale through Shri Bagalkote. There is no convincing evidence on record to show that the branch was closed for six months prior to 24th December 1999 due to threats of depositors of Kothari Finance Ltd. The Company has paid full wages to the employees of Kolhapur Branch for six months despite its closure. This is not an isolated transfer. Four other employees are also transferred and they

have nowhere complained about the transfer. It is for the Company to manage its own affairs more effectively. The Courts are not permitted or expected to test each and every reason regarding the effective management of the business by an employer. It has to be mainly seen as to whether the transfer adversely affect the service-conditions. In such circumstances, one cannot jump to the conclusion that the transfer is *malafide* one. No case is made out to interfere with the transfer on the ground of *malafides.* No doubt, in the past, there was some litigation between the parties. But the relations appear to be smooth since 5/7 years. Consequently, it cannot be accepted that Complainant's transfer is effected only because he filed many complaints in the past. I, therefore, hold that the Complainant has failed to prove issue No. 1. Accordingly, I answer the same in the negative.

34. Advocate Shri Joshi further argued that Complainant's transfer will finally lead to retrenchment and hence the same is in violation of Section 8-A read with item 10 of Schedule IV of the I. D. Act. For that end, he relied on the decision of Bombay High Court in *Gulf Air, Bombay* V/s. *S. M. Vaze, Member, Industrial Court, Maharashtra Bombay and Ots. reported in 1994 II CLR at page 292 and of Hon'ble Apex Court in Lokmat News Paper Pvt. Ltd.* V/s. *Shankar Prasad reported in 1999 II CLR at page 433.*

35. Advocate Shri Nevagi replied that emphasis is not of rationalisation but on its likely effect on employment. General Manager Shri Ram Kumar has affirmed in the affidavit (Exh. C-21) that the Company has no intention of terminating any employee. Mere suspecion without any material justification cannot justigy the inference of likelihood of retrenchment.

36. Admittedly, about 10000 employees are working under the Company. The Complainant has admitted in the cross-examination that he has no enmity with the Board of Directors of the Company. Other transferred employees are not retrenched. In *Lokmat News Paper Pvt. Ltd.'s case,* many employees were transferred to other branch and then were retrenched on the ground that they are surplus. In the present case, all other employees working under Kolhapur Branch except the Branch Manager, are transferred. The Company has branches all over India. In such circumstances, apprehension of the Complainant that he well be retrenched on the ground of being surplus, does not stand to reason. His such apprehension is hyper technical one. Besides, he is pretty senior most and not a junior one. The Transfer order clearly says that his service conditions will not be adversely affected on any count. Consequently, I answer Issue No. 2 in the negative.

37. It is further case of the Complainant that Belgaum Branch is established after he joined the Company and hence he cannot be transferred, out of State to Belgaum. He replied in the cross-examination that Company's letter dated 6th July 2001 bears salestax number and the date as 30th June 1987 and the same is only evidence to prove that Belgaum Branch is opened after his joining at Kolhapur.

38. General Manager Shri Ram Kumar has affirmed in affidavit (Exh. C-11) that there were several companies prior to 1972 belonging to Kothari Group of Companies which include Blue Mountain Estates and Industries and Kothari (Madras) Ltd. and Blue Mountain Estates and Industries merged with M/s. Kothari (Madras) Ltd. in the year 1972 by a scheme of amalgamation and the name was changed to Kothari Industrial Corporation Ltd. Company's Secretary Shri Kannan has affirmed in affidavit (Exh. C-25) that prior to amalgamation, Blue Mountain Estates and Industries Ltd. used to look after Belgaum Office and both companies were amalgamated by orders of Madras High Court in Company Petition No. 58 to 62 of 1970.

39. The Company has produced Memorandum and Articles of Association. It containts respective amalgamation Orders. Later on, name of Kothari (Madras) Ltd. was changed to M/s. Kothari Industrial Corporation. Documentary evidence produced on record regarding amalgamation of the Company and change of name is satisfactory and convincing.

40. The Company has examined Commercial Tax Inspector Shri G. Shivprasad (Exh. C-30) of Government of Karnataka as its witness. He deposed that Government of Karnataka issued a certificate of registration to M/s. Kothari (Madras) Ltd. on 9th May 1973 on receipt of application dated 23rd June 1963 for registration of Sales tax. He produced true copy of the Certificate with list Ex. C-31. He further deposed that the Certificate is valid from 23rd July 1963 onwards, is not yet cancelled and list of branches of Kothari (Madras) Ltd. is annexed to the same. He further clarified that the Registration is for main Company as well as for the branches. He replied in the cross-examination that seperate Registration Certificate is issued to every branch, is to be displayed at every branch and Certificate dated 9th May 1973 is for Hasan District only. However, it is stated below Clause 10 of the Certificate that a Certificate is issued for Belgaum Branch.

41. I perused the Registration Certificate. The same is issued in the name of M/s. Kothari (Madras) Ltd. on 9th May 1973. It is endorsed that the same is valid from 23rd July 1963 until cancelled. Clause 10 thereof says that the dealer has additional place(s) of business as noted below. Later on, it is endorsed that the additional place(s) of business are as per the list enclosed. At Sr. No. 3 of the list, it is stated that the place is at 'Krushi Bhavan Godown, Opposite S. T. Bus Stand, Belgaum' with effect 5th January 1969. The Certificate is renewed from time to time by Bangalore Office. It is renewed on 2nd April 1968 till 31st March 1969. Later renewal is from 18th June 1979 to 31st March 1980.

42. Advocate Shri Joshi argued that the Company has not specifically pleaded in the written statement at Exh. C-4 that Belgaum Branch existed prior to Complainant's appointment. Heavy burden lies upon the Company to prove its plea. The certificate is not a 'Magna-charta' of the existance of the Branch. There must be number of documents to substantiate such plea and the certificate alone is not a conclusive proof that the branch existed prior to Complainants appointment. General Manager Shri Ram Kumar has stated that the Branch was started in the year 1963, whereas witness Shri G. Shivprasad (Exh. C-30) says that certificate of registration is issued on 9th May 1973. On the contrary, Company's letter dated 6th July 2001 shows the date as '30th June 1987' as the date of registration under the Sales Tax. Thus, the entire evidence is suspecious one and cannot be believed. There is no inherrent right to transfer to the branches opened later on. In support of his arguments, he relied on the decision in *Crest Communication Ltd.* V/s. *Miss Shettal Shenoy* (reerred supra).

43. Advocate Shri Nevagi replied that the mode of issuing Registration Certificate under the Sales Tax Act and renewals thereof is not the contraversy but has to be basically seen as to whether the Branch existed or not.

44. Witness Shri G. Shivprasad (Exh. C-30) is un-interested witness. It has come on the record that Blue Mountain Estates and Kothari (Madras) Ltd. got amalgamated in the year 1971. Kothari (Madras) Ltd. was originally incorporated on 1st July 1970. The date of commencement of Belgaum Branch is not material. What is material is whether the same was in existance prior to 1st June 1976. The certificate is issued on 9th May 1973. List of additional place(s) is shown to be Belgaum and registration thereof is issed with effect from 5th January 1969. In such circumstances, evidence of the company is better than of the Complainant. Considering production of registration certificate endorsement on letter dated 6th July 2001 that Sales Tax Registration is dated 30th June 1987 is of no consequences. It is no-body's case that Belgaum Branch is not at all in existance. Admittedly, the same is existing now. The material controversy is its existance prior to 1st June 1976. The Certificate shows that is existed with effect from 5th January 1969. I, therefore, hold that the Belgaum Branch was in existance prior to Complainant's appointment. Accordingly, I answer Point No. 3 in the affirmative.

45. The Complainant is bound by the confirmation letter dated 7th December 1976, wherein it is specifically stated that his services are liable to be transferred to any Company/Branch or Depot. Belgaum Branch existed prior to his appointment. Consequently, it cannot be accepted that his transfer is contrary to service conditions. Accordingly, I answer Point No. 4 in the negative.

46. To summarise, the Complainant has failed to prove that his transfer is *malafide* one under the guise of following management policy. On the contrary, there is justification for transfer. His apprehension that the transfer will finally lead to retrenchment is unsustainable in law and is outcome of conjunctures and surmises. All employees, except the Branch Manager, from Kolhapur Branch are transferred, have joined at transferred places and none of them are retrenched. The Company has about 10,000 employees and has branches all over India. Belgaum Branch existed since prior to Complainant's appointment. He is bound by terms of his confirmation letter. Consequently, his transfer cannot be said to be contrary to service conditions. Controversy regarding his failure to join at the transferred place is not subject matter of the complaint and any observations regarding the same are unwarranted. In the result, I find that he has failed to prove alleged unfair labour practices. Accordingly, I answer No. 5 in the negative and pass following order.

Order

(*i*) The Complaint is dismissed.

(*ii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 16th September 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

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BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 248 OF 1998.—(1) The Depot Manager, Maharashtra State Road Transport Corporation, Malakapur Depot, Malakapur, Dist. Kolhapur ; (2) The Divisional Controller, Maharashtra State Road Transport Corporation, Kolhapur Division, Kolhapur.—*Petitioners*.— *Versus* —Shri Madhukar Lahu Sutar, At Post Malakapur, Burud Galli, District Kolhapur.—*Respondent.*

In the matter of Revision u/s. 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri M. G. Badadare, Advocate for the Petitioners.
Shri M. S. Topkar, Advocate and
Shri D. N. Patil, Advocate for the Respondent.

Judgment

This is a Revision by original Respondent Maharashtra State Road Transport Corporation challenging legality of judgment and order passed in Complaint (ULP) No. 1 of 1991 by Labour Court, Kolhapur whereby, the Corporation is directed to continue interim temporary reinstatement of its employee driver with continuity of service with liberty to the Corporation to award appropriate punishment except that of dismissal of discharge.

2. Admittedly, present Respondent (hereinafter referred to as the Complainant) was employed with present Petitioner (hereinafter referred to as the Corporation) as a driver from the year 1987. The Corporation served chargesheet upon him alleging that he was unauthorisely absent from 9th June 1990 till 17th July 1990. An enquiry then took place and the Complainant was ultimately dismissed on 15th December 1990. Above complaint was filed on 31st December 1990 alleging that the Complainant was admitted in the hospital of Dr. Kulkarni from 9th June 1990 to 17th July 1990, as was ill. He informed such fact to concerned authority through his co-worker, as per procedure and requested for grant of leave but it was not sanctioned. He resumed duties and produced a medical certificate on that day, but the same was not considered and a chargesheet was issued. Findings of the Enquiry Officer are perverse and dismissal is an unfair labour practice. Finally, he prayed reinstatement with continuity of service and full back wages. The Complainant, alongwith the complaint filed an application Exh. U-2 for interim temporary reinstatement and the Labour Court directed the Corporation to allow the Complainant to join duties, until further orders. The Corporation obeyed such order and allowed the Complainant to join duties.

3. The Corporation filed its written statement at Exh. 12 and resisted the claim. It contended that the Complainant did not file any application for leave but was absent unauthorisely. He is in the habit of remaining absent without prior permission. In the past, he was imposed with minor punishment for minor absenteesm but did not improve. Proved misconducts was grave. Considering his past record, punishment of dismissal was proposed. Thus, the Corporation justified its action and prayed for dismissal of the complaint.

4. Learned Labour Court framed issued and the parties went to the trial. The Complainant admitted by pursis Exh. U-17 that the enquiry is procedurely fair and proper. None of the parties led oral evidence. The Corporation produced entire enquiry papers.

5. Learned Labour Court, on perusal of enquiry papers and bearing both parties, held that medical certificate issued by the Complainant is not disputed by the Corporation. The absenteesm was unauthorise but for justifiable reasons. The Complainant is awarded minor punishment for previous few instances of absence, however, now has improved the attendance and an opportunity needs to be extended to reform himself into a disciplined employee. As such, punishment of dismissal is colourable exercise of powers, for misconduct of a minor nature and is an unfair labour practice. Finally, it allowed the complaint partly as above, *vide* judgment and order dated 17th September 1998. The same is challenged in this Revision.

6. I heard both parties. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned decision holding that punishment of dismissal in an unfair labour practice under item 1(b) and (g) of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971 ?

(*ii*) What order ?

7. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) The Revision Application is dismissed.

Reasons

8. This being a Revision under section 44 of the M.R.T.U. and P.U.L.P. Act, it is not necessary to scrutinise rival contentions meticulously. The only material question is whether documents on record are incapable or supporting impugned order ? In other words, whether impugned order is perverse or justifiable ?

9. Shri Badedare, learned Advocate representing the Corporation argued that Complainant's past record is full of absenteesm. He was absent in the past for four times and punishment of finding was awarded. However, there was no improvement on his part. As such, he does not deserve any sympathy. He further explained that there was some improvement in his attendance after service of chargesheet dated, 17th August 1990 but that too pending the enquiry and pending the complaint. As such, the Labour Court extended misplaced sympathy to him.

10. Shri Patil, learned Advocate representing the Complainant replied that the Complainant is fined for previous absenteesm. However, present absenteesm has to be considered in the list of justification thereof. The Complainant felled down from roof of his house, got his left leg injured and hence could not attend his duties. He was working as a driver and was unable to attend the duties till cured. Medical Certificate of Dr. Kulkarni was submitted by him on the day on which he resumed duties. Thus, the punishment is well justifiable. Learned Labour Court has rightly considered the same and rightly held that punishment of dismissal is colourable exercise of powers and shockingly disproportionate.

11. Complainant's re-dismissal on 4th July 1997 was admittedly not brought to the notice of the Labour Court when it delivered impugned decision. It is not case of the Corporation that Medical Certificate produced by the Complainant was bogus and fictitious. It is main griavance of the Corporation that he was absent without permission. In my judgment, however, leave cannot be availed in anticipation of some illness. The Complainant felled down from roof of his house, got his left leg injured and thus was unable to attend the duties. He is working as a driver and must be physically fit. Therefore, observations of learned Labour Court that the abseteesm was justifiable though unauthorised, are well reasoned. In such circumstances, further observations that opportunity needs to be extended to the Complainant to reform himself into a disciplined employee, are also justifiable. It appears that the Corporation did not peruse such justification and straightway imposed punishment. Considered such peculiar circumstances and proper justification for absence, learned Labour Court has rightly held that punishment of dismissal is an unfair labour practice under item 1(b) and (g) of Schedule IV of the M.R.T.U. and P.U.L.P. Act. Learned Labour Court has not fully exonerated the Complainant but has permited the Corporation to award appropriate punishment as per standing orders, except that of dismissal of discharge. In such circumstances, I find that no case is made out to exercise revisional jurisdiction under section 44 of the M.R.T.U. and P.U.L.P. Act. Accordingly, I answer point No. 1 in the affirmative and pass following order :—

Order

(*i*) The Revision Application is dismissed.

(*ii*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Maharashtra, Kolhapur.

Kolhapur,
Dated the 5th October 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

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BEFORE THE HON'BLE MEMBER, INDUSTRIAL COURT, AT KOLHAPUR

REVISION APPLICATION (ULP) No. 62 OF 2001.—Indo Continental Hotels and Resorts Ltd., Sansar Chandra Road, Jaipur 302 001. Through Shri Kurien Varghese.—*Petitioner*.—*Versus* —Shri Sudhakar Kochu Kunath, C/o. Brijesh Harmalkar, C-2, Savitribai Phule Housing Society, Ambai Tank, Kolhapur.—*Respondent.*

In the matter of Revision under section 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri M. R. Naniwadekar, Advocate for the Petitioner.
Kum. S. V. Thorat, Advocate for the Respondent.

Judgment

This is a Revision by an employer challenging legality of judgment and order passed in Complaint (ULP) No. 50 of 1992 by Labour Court, Kolhapur, whereby he is directed to reinstate his employee on his previous post with continuity of service and full back wages with effect from 2nd March 1992 by saddling costs of Rs. 1,000.

2. Admittedly, present Respondent (hereinafter referred to as the Complainant) was in employment of premises of present Petitioner (hereinafter referred to as the Hotel) as Grade II Cook from 2nd February 1987, lastly drawing salary of Rs. 1,180 per month in March, 1992. Initially, Hotel premises were managed by Indian Tourism Development Corporation, Delhi. Its owner *i.e.* Indage India Ltd. then handed over its management on 31st March 1991 to Indo Continental Hotel and Resorts Ltd. *i.e.* present Petitioner. The Complainant was in employment, as on 2nd March 1992.

3. Above complaint came to be filed on 25th March 1992 alleging that the Hotel was run by Ashoka Group of Hotels till 1st April 1991 and thereafter it was run by Mansing Group. All previous employees of the Hotel were continued by the Mansing Group as their employees. The Complainant is a permanent employee. Accordingly, he also was continued. It is alleged that Hotel's General Manager obtained Complainant's resignation on 2nd March 1992 by applying physical force, which is an unfair labour practice. The Complainant then orally complained with Police on 2nd March 1992 itself. But no cognisance there of was taken till 5th March 1992. Prior to that, the Complainant met Hotel's Manager and requested him to allow him to join duties and not to take any action on the forced resignation, however, his request was turned down. Eventually, the Complainant sent letter dated 6th March 1992 to the Manager stating that forced resignation obtained from him should be treated as withdrawn and he should be allowed to join duties. He then lodged a written complaint on 6th March 1992 itself to In-charge Officer of Juna Rajwada Police Station that a forced resignation was obtained from him. It is further alleged that Hotel's Manager, on receipt of withdrawal letter, communicated the Complainant by a back-dated letter that his resignation is accepted. He received Manager's letter on 12th March 1992. It is also alleged that acceptance of alleged resignation after its withdrawal is illegal and an unfair labour practice. Complainant's termination without enquiry, is in violation of provisions of Section 25F and 25G of the I. D. Act and is in unfair labour practice. Finally, it is alleged that Hotel's General Manager has indulged into unfair labour practice under items 1(a), (b), (d) and (f) of schedule IV of the M.R.T.U. and P.U.L.P. Act.

4. On above averments, the Complainant prayed for requisite declaration of unfair labour practice, direction to reinstate on his original post with continuity of service, full back wages and other consequential reliefs.

5. The Complainant also made an application (Exh. U-2) under section 30(2) of the M.R.T.U. and P.U.L.P. Act, alongwith the Complaint, to saty termination order and allow him to join duties till decision of main complaint.

6. Hotel's General Manager contested the Complaint by filing a say cum written statement. He contended that Indian Tourism Development Corporation while handing over management of the Hotel entered into settlement with all of its employees including the Complainant. As per the settlement all employees tendered their resignations and accepted legal dues. All the employees, thereafter offered their services to Indo Continental Hotel and Resorts Ltd. Accordingly, the Complainant was taken in employment from 1st April 1991.

7. It is further contended that the Complainant and one another employee was found to have misappropriated amount payable to the Hotel. One guest ordered breakfast but amount of bill thereof was not deposited with the Hotel by the Complainant and the other employee despite collecting the same from the customer. Eventually, the Complainant and other co-employee were called on 3rd March 1992 and were introgated about the fraud. Both confessed their guilt. Eventually, it was proposed to take legal action against them. But they both requested not to do so stating that they will resign from the post. Accordingly, they both tendered their resignations in their own hand-writing on 3rd March 1992 which was accepted with immediate effect. They thereafter vacated the quarters and left Hotel premises. Formal letter of accepting resignation was despatched to the Complainant and his co-employees on 4th March 1992 on their permanent address on record but those letters were returned with an endorsement that the addressee is not available. It is further contended that the resignations were voluntary one and never obtained by threat or other coerceive means. Police did not take any action but filed complaint made by the Complainant. The Complainant sent letter dated 7th March 1992 to the Chairman making out a different story. As such, theory of obtaining resignation forceably is after thought. In fact, all legal dues were paid to the Complainant and those were accepted by the Complainant without protest. Alleged letter dated 6th March 1992 withdrawing resignation is fabricated one. Letter accepting the resignation is not back-dated one. In such circumstance question of paying retrenchment compensation, notice pay etc. does not arise at all. As such, there is no any unfair labour practice.

8. It is further contended in the alternate that if it is held that the resignation was obtained by duress then permission may be granted to lead evidence Finally, the Manager prayed for dismissal of the compliant.

9. Learned Labour Court, after hearing both parties, rejected the interim application (Exh. U-2) on 22nd May 1992. It then framed issues at Exh. 11 and the parties went to the trial. The Complainant examined himself at Exh. 18 and Ex-Watchman Shri Jadhav at Exh. U-28. He produced the correspondence between him and the Hotel. In rebuttal, original resignation, copy of settlement and copies of correspondence were produced. The Manager Shri Purohit then examined himself at Exh. C-34.

10. Both parties preferred to file written arguments and made oral submissions in addition. Learned Labour Court, on perasal of evidence and hearing both parties, firstly held that ex-watchman Shri Jadhav was in employment when the Complainant was in employment and dis-believed Hotel's plea that the watchman was not in employment on the relevant date. It secondly held that Police made enquiry with the management and hence the question as to when complaint was made to police is immaterial. It then held that Complainant's plea of obtaining resignation under duress is more probable and believed the same. It further held that the resignation was withdrawn prior to its acceptance. Ultimately, it held that the management has engaged into unfair labour practice and allowed the complaint as above *vide* judgment and order dated 27th September 2001. The same is challenged in this Revision.

11. I heard both Advocates. Considering rival submissions, following points arise for my determination :—

(1) Whether impugned finding that Complainant's plea of obtaining his resignation under duress is more probable and acceptable, is sustainable in law ?

(2) Whether impugned finding that the resignation was withdrawan prior to its acceptance is sustainable in law ?

(3) Whether impugned finding of engaging into an unfair labour practice, is sustainable in law ?

(4) What order ?

12. My findings, on above points, are as under :—

(1) No.

(2) No.

(3) No.

(4) The Revision Application is allowed.

Reasons

13. It is not controverted that the Complainant was in employment as on 2nd February 1992. The date of his original employment is immaterial. It is also not controverted that disputed resignation is in his hand-writing. It has also come on the record that he made complaint on 10th March 1992 to police that Hotel's Manager obtained forced resignation from him and one other employee Shri Muchandi on 2nd March 1992. Complaint to police does not state about withdraw of the resignation. It is also an admitted position that the General Manager sent all legal dues to the Complainant by letter dated 17th March 1992 by a cheque. The Complainant accepted the same without any protest and then encashed the same. The record further shows that the Complainant sent letter dated 7th March 1992 to higher authority of Hotel Management that his resignation was obtained for force. I must state at this state itself that copy of alleged letter dated 6th March 1992, produced with list Exh. 4/1, withdrawing the resignation is zerox one, is in Marathi language and not signed by any-body. According to the Complainant, it was sent under certificate of posting. Admittedly, said postal receipt is not produced on record.

14. Shri Nanivadekar, learned Advocate representing the Management argued at the outset that Courts cannot decide the controversy with conjectures and surmises In fact, plea of obtaining resignation by duress is vague and untrustworthy. He further submitted that there is absolutely no evidence on record to show that the Complainant, after realeased from duress immediately complained to the police and/or informed the management that the resignation was obtained under duress. Mere fact that police made enquiry with the General Manager does not automatically prove that there was duress. In fact, the Complainant himself has stated that the Police advised him to approach the Labour Court. Observations in impugned decision that police enquired into the matter and therefore question as to when complaint was made to Police is immaterial, are unsustainable in law. In fact, no action by Police is indicative of voluntary resignation. He further canvassed that best possible evidence was the other cook who was said to be present at the relevant time. Witness Shri Jadhav, has replied in the cross examination that he does not know reasons for forced resignation. In addition, there was no reason for the management to obtain resignation by duress. Complainant's union activites were only during tenure of previous management and hence new management had no grudge against him. He then submitted that written arguments filed before the Labour Court be read as written arguments in this Revision Application.

15. Miss Thorat, learned Advocate representing the Complainant countered above arguments and replied that plea of misappropriation by the Complainant is not proved. Complaint was made to Police on 10th March 1992 and police enquired into the matter. Witness Shri Jadhav has supported the Complainant. The resignation was obtained forceably at 12-30 a.m. Complainant's immediate conduct is material one. As such, the Labour Court has rightly accepted plea of obtaining resignation under duress. She also stated that written arguments filed before Labour Court be read as arguments in this Revision Application.

16. As regards pleadings of obtaining resignation by duress, I must state that those are totally vague. It is simply alleged that resignation was obtained on 2nd March 1992 by applying physical force. I am aware that the rules of pleadings are not strictly applicable in the proceedings under the M.R.T.U. and P.U.L.P. Act, however, when a persons alleges practice of force or duress, it is necessary to set out the particulars of duress so as to convey the circumstances then prevailing. Such particulars are not given by the Complainant in the complaint. In my judgment, in case of duress and coercion, the party pleading it must set forth full particulars and case can only be decided on particulars as led. There cannot be a departure from them in evidence. According to the Complainant, his resignation was forceably obtained on 2nd March, 1992. He has filed an affidavit (Exh. U-3) to that effect. He deposed that the management called him and another employee and both were beaten by 7/8 persons of the Hotel. But he replied in the cross examination that he does not know the other persons present in the office of the Manager and did not make report against those persons. In my judgment, if the Complainant was really beaten by 7/8 persons and that too of Hotel, then he ought to have lodged a complaint against the Manager as well as 7/8 persons of the Hotel. He has improved his version in his cross examination that he was not knowing those persons to suit his convenience.

17. There is another aspect which requires consideration in this context. According to the Complainant, he made a complaint with Police on 3rd March 1992 but police did not take any action. For that purpose, he ought to have either called police record or examined concerned Police Officer to substantiate his case. But there is nothing on record to corroborate his such version. It has come on record that then he made a written complaint on 10th March 1992, police made enquiry and asked him to approach the Labour Court. He has replied in the cross examination that he made no complaint to police prior to 10th March 1992 and name of Hotel's Manager is not mentioned in the complaint to police. He has not even enquired about the progress in his complaint. Eventually, a plausible inference is that no complaint was made immediately after he was released from alleged duress. Interestingly, it is not stated in the complaint dated 10th March 1992 that a complaint was made in the past but police did not take any action. In such circumstances, delay in filing the complaint is self eloquent. I am aware that strict provisions of Evidence Act or principles of Criminal jurisprudence cannot be invoked. But the object therein cannot be totally ignored. Possibility of coloured version or concocted story as a result of deliberation and consultation cannot be ruled out on account of total inaction by the Complainant till 10th March 1992. In such circumstances, mere enquiry by police and that too without further legal action is of no help to jump to the conclusion that plea of obtaining resignation under duress is more probable and acceptable. In fact, evidence on record if read reasonably does not suggest that the resignation was obtained under duress. I further find that cumulative effect of the evidence placed on record, does not make theory of duress probable and acceptable.

18. Now turning evidence of Shri Jadhav, I find that learned Labour Court has blindly believed him simply by dis-believing management's plea that he was not in employment at the relevant time. Apart from his employment or otherwise, his testimony has to be tested on the unvil of objective circumstances. However, it pains me in stating that learned Labour Court has not adhered to such test. It has come in cross-examination of Shri Jadhav that he was on duty at side-gate on the day of incidence. There is considerable distance between side-gate and Manager's cabin and there were instructions not to leave the gate unless a reliever arises. Admittedly, he has not entered into cabin of Hotel's Manager. In such circumstances, it cannot be accepted that Shri Jadhav has personally witnessed the incident. In addition, he has deposed

in Examination-in-chief that he left the services due to harassment by the management and his resignation was obtained by the management. Eventually, testimony of Shri Jadhav cannot be believed. But the learned Labour Court has blindly believed his version. In fact, the other co-employee was the best witness for the Complainant as it is own case of the Complainant that his resignation too was obtained by force.

19. To summarise, evidence on record if read reasonably is incapable of supporting the finding of obtaining resignation by force. Inference drawn is unreasonable one and is not learned out by the record. As such, powers under section 44 of the M.R.T.U. and P.U.L.P. Act need to be exercised. Consequently, I answer Point No. 1 in the negative.

20. Advocate Shri Naniwadekar, in the second phase, aruged that the very contention of informing the management by letter dated 6th March 1992 that the resignation is withdrawn as well as receipt of said letter by management, is not proved. The Labour Court proceeded on the assumption that such letter was sent to the management and received by the management. He pointed out that alleged office copy of said letter (produced with list Exh. 4/1) is not signed by any-body and copy of postal certificate of despatching the same through post to the management is also not produced. The labour Court was totally wrong in allowing the alleged letter to go on record although the same is not properly proved. He then added that, therefore question of withdrawing the resignation prior to its acceptance, communication of acceptance etc. does not arise at all.

21. Advocate Miss Thorat replied that Hotel's letter dated 17th March 1992 (Exh. 17/A) refers to all other letters of Complainants. But reference to letter dated 6th March 1992 withdrawing the resignation is purposely not made. But it can be well said that the management was aware of the withdrawal letter. Therefore, factual finding recorded by labour Court is well justifiable.

22. Learned Labour Court has observed that management's letter dated 17th March 1992 shows that letter about withdrawal of resignation was received by the management. It has also observed that withdrawal letter is not refered by the management in its letter dated 17th March 1992.

23. Admittedly, there is no primary of direct evidence to prove that the Complainant sent letter withdrawing the resignation and the same was received by the management. Eventually, I have to find whether impugned finding is borned out from circumstantial evidence brought on record. It is contended in the written statement that the Complainant wrote letter dated 7th March 1992 to the Chairman, it is specifically denied that the Complainant withdrew the resignation dated 6th March 1992. It is contended that the said letter is fabricated one. Eventually, burden lies upon the Complainant to prove that he withdrew the resignation by letter dated 6th March 1992. Hotel's Manager has replied in the cross examination that he did not receive the withdrawal letter. There is no suggestion to him that he received the withdrawal letter and then a reply was given on 17th March 1992. The withdrawal letter is not even exhibited. In such circumstances, I am unable to understand as to how learned Labour Court allowed the withdrawal letter to go on record and further found the same to be properly proved. It is observed by the Labour Court that the management is silent as to when the Complainant sent letter dated 7th March 1992 and how the same was received. But it is specifically contended in the written statement that the said letter was adressed by the Complainant to the Chairman. As such, observation of learned Labour Court regarding Complainant's letter dated 7th March 1992 does not stand to reason. It is glaring to note that the Complainant has nowhere alleged in letter dated 7th March 1992 addressed to the Chairman as well as to complaint dated 10th March 1992 made to police that he has withdrawn the resignation dated 6th March 1992. In my judgment, his such omissions coupled with no evidence regarding receipt of witherawal letter by the management, are self eloquent. Eventually, inference drawn by learned labour Court relying upon management's reply dated 17th March 1992 that the management was aware of the withdrawal letter is totally un-reasonable and unsustainable in law. The plausible and reasonable inference is that the Complainant has failed to prove that he withdrew the resignation by letter dated 6th March 1992.

24. In the light of above discussions, there is no point in proceeding further as to whether the resignation was accepted prior to its withdrawal or later. Advocate Miss Thorat relied upon following decisions as to when the resignation is effective :—

(*i*) *J. N. Srivastav* V/s. *Union of India and Anr.* reported *in AIR 1999 Supreme Court at page 1571.*

(*ii*) *Management of Karnatak Road Transport Corporation* V/s. *M. B. Ramkrishna,* reported in *2001 I CLR at page 959,* and

(*iii*) *Jain S. K.* V/s. *Labour Court* and Anr. reported in *1989 II LLN - at page 263.*

25. I am respectfully bound by the propositions of law laid down in those decisions. However, when the very fact of withdrawal of resignation is not established, it is not necessary to dilate on the point as to when the resignation was accepted and intimation thereof was served upon the Complainant. It is seen that learned labour Court misdirected itself presuming that the Complainant withdrew the resignation and letter thereof was received by the Manager. I therefore find that impugned finding that the resignation was withdrawn prior to its acceptance is unsustainable in law. Accordingly, I answer Point No. 2 in the negative.

26. In the background of above discussions and findings, I hold that the Complainant has failed to prove alleged unfair labour practices and affirmative finding of learned labour Court is unsustainable in law. Accordingly, I answer Point No. 3 in the negative.

27. To sum-up plea of obtaining resignation under duress suffers from many major improbabilities and finding thereof it without any proper appreciation of evidence on record. In addition, the very contention of withdrawing the resignation by letter dated 6th March 1992 and receipt of the same by the management is not proved. Eventually, question of accepting the resignation before or after its receipt does not arise. It appears that learned labour Court misdirected itself on material aspect and assumed a role of crusader instead of a adjudicature. Impugned finding is unsustainable in law and requires interference under section 44 of the M.R.T.U. and P.U.L.P. Act. Consequently, impugned decision is liable to be set aside.

28. To conclude, I pass following order :—

Order

(*i*) The Revision Application is allowed.

(*ii*) Impugned decision directing reinstatement with continuity of service and full back wages with costs of Rs. 1,000 is set aside.

(*iii*) The Complaint is dismissed.

(*iv*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 31st August 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

———

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA, AT KOLHAPUR

REVISION APPLICATION (ULP) No. 74 OF 2002.—Shri Akbar A. Rehman Haju, At Post Oni, Tal. Rajapur, Dist. Ratnagiri.—*Petitioner*.— *Versus* —Maharashtra State Road Transport Corporation, Ratnagiri Division, Ratnagiri, through its Divisional Traffic Superintendent.—*Respondent.*

In the matter of Revision under section 44 of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri D. N. Patil, Advocate and Shri B. D. Manolkar Advocate for the Petitioner.

Shri M. G. Badadare, Advocate for the Respondent.

Judgment

This is a Revision by an employer challenging legality of judgment and order passed in Complaint (ULP) No. 33 of 2001 by Labour Court, Kolhapur whereby relief of restraining the employer from terminating his services as per show cause notice, proposing punishment from service, is refused by dismissing his complaint.

2. Admittedly, present Petitioner (hereinafter referred to as " the Complainant ") is working under present Respondent (hereinafter referred to as " the State Road Transport Corporation ") as a conductor from the year 1987. He was on duty on 13th December 1999 on Panhalje-Khed Rout. His bus was checked at Khed stop by the Checking squad. Then a report was made to Higher Authorities, he was then served with chargesheet dated 19th December 1999 under clauses 7(*j*) *i.e.* under issue of tickets, (10) indiscipline, 12(b) fraud, dishonesty or misappropriation in connection with the business or the property of the Corporation and (22) breach of administrative orders of its Departmental Appeal Procedure. The Complainant denied the charges and then an enquiry took place. The Enquiry Officer held that all charges levelled against him are proved. Eventually, he was served with a show cause notice dated 27th January 2001 as to why he should not be dismissed from service for the proved misconducts. Above complaint came to be filed on 31st January 2001 apprehending termination alleging unfair labour practice under items 1(a), (b), (d) and (g) of schedule IV of the M.R.T.U. and P.U.L.P. Act. It is alleged that the charges are vague as well as false. No proper opportunity to defend was extended to the Complainant. The Enquiry Officer acted as a Prosecutor-*cum*-Judge. In addition, the findings of the Enquiry Officer are perverse. It is further alleged that alleged misconducts are minor and technical in nature and hence proposed punishment of dismissal is shockingly disproportionate. Finally, the Complainant prayed for declaration of requisite unfair labour practice, to set aside the show cause notice and permanently restrain the Corporation from taking any action as per show cause notice.

3. The Corporation filed its written statement at Exh. C-15 and traversed all material allegations made by the Complainant. It contended that the Complainant was found to have committed misconducts and hence was chargesheet. Every opportunity was given to him to defend him in the enquiry. Non-examination of the passenger is of no consequence as their statements were recorded in presence of the Complainant. He admitted the misconduct in his spot statement. As such, findings of the Enquiry Officer are well justifiable. It is further case of the Corporation that proved misconducts amount to fraud, dishonesty and misappropriation. As such, punishment of dismissal is well justifiable. Finally, it prayed for dismissal of the complaint.

4. The Labour Court framed issues at Exh. 30 and the parties went to the trial. The Complainant admitted legality of the enquiry and stated that he does not wish to lead oral evidence *vide* pursis Exh. U-18. He produced copy of the enquiry report and final show cause notice. The Corporation also did not lead oral evidence but produced copies of entire enquiry and past record.

5. Learned labour Court on perusal of evidence and hearing both parties held that the enquiry is fair and proper and findings of the enquiry Officer are not perverse. It then held that proved misconducts are grave and serious despite amount of misappropriation and hence proposed punishment of dismissal is not an unfair labour practice. It then dismissed the complaint *vide* judgment and order dated 16th July 2002. The same is challenged in this Revision.

6. I heard both Advocates. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned decision dismissing the complaint warrants interference ?

(*ii*) What order ?

7. My findings, on above points, are as under :—

(*i*) No.

(*ii*) The Revision Application is dismissed.

Reasons

8. This being a Revision u/s. 44 of the M.R.T.U. and P.U.L.P. Act, it is not necessary to scrutinise the rival contentions meticulously. The only material question is whether documents on record are incapable of supporting impugned order. In other words, whether impugned order is perverse or justifiable ?

9. I perused the enquiry papers. Admittedly, the enquiry is fair and proper. It is seen that the Complainant has admitted factual aspects in his spot statement. As such, non-examination of passenger thereof is no consequence. Besides, it is not case of the Complainant that statement of passenger were not recorded in his presence. On the contraty, those were recorded in his presence. In such circumstances, findings of the enquiry officer cannot be held to be perverse. Findings can be held to be perverse if those are without evidence. In the present case, there is sufficient evidence on record. As such, findings of the Enquiry Officer are well justifiable.

10. As regards proportionality of proposed punishment, Advocate Shri Manolkar representing the Complainant argued that amount misapropriated is marginal one and therefore punishment of economical death is unsustainable. Advocate Shri Badadare representing the Corporation replied that the conductor is the only sourse of income for the Corporation and enjoys a position of trust. Proved misconducts cannot be said to be minor or technical. As such, punishment of dismissal it well justifiable. Hon'ble Apex Court is *Janata Bazar* V/s. *Secretary reported in 2000 II CLR at page 568* has observed that when misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the Complainant in service. It is also observed that there is no question of considering past record in case of proved misappropriation, it is discretion of the employer to consider the same in appropriate case but the Labour Court cannot substitute penalty imposed by the employer in such case.

11. Considering dictum of Hon'ble Apex Court, quantam amount misappropriated is of no consequence. Besides, the Complainant's past record shows that he was punished for monetary misconducts. I, therefore, find that learned Labour Court has rightly held that proposed punishment of dismissal is not an unfair labour practice.

12. In the background of above discussions and finding, I hold that the labour Court has rightly dismissed the complaint. Impugned decision no-where suffers from perversity. On the contrary, there is every substance in its reasoning. As such, no interference is called for. Accordingly, I answer Point No. 1 in the negative and pass following order :—

Order

(*i*) The Revision Application is dismissed.

(*ii*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 31st August 2002.

V. D. PARDESHI,
Asstt. Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

REVISION APPLICATION (ULP) No. 110 of 1999—Shri Parshuram Gopal Mangure, R/o Ravulwada, Vengurle, Tal. Vengurle, Dist. Sindhudurg—*Petitioner—V/s*—Divisional Traffic Superintendent, Maharashtra State Road Transport Corporation, Sindhudurg Division, Kankavali, Dist. Sindhudurg—*Respondent.*

In the matter of revision u/s 44 of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri S. V. Kotnis, Advocate for Petitioner.

Shri M. G. Badadare, Advocate for the Respondent.

Judegment

This is a revision by original Complainant challenging legality of judgment and order passed in Complaint (ULP) No. 97 of 1991 by Labour Court, Kolhapur, whereby relief of reinstatement with continuity of service and full back wages is refused by dismissing his complaint.

2. Admittedly, present Petitioner (hereinafter referred to as " the Complainant ") got employment under present Respondent) as driver in the year 1986 and was confirmed in the year 1987. The Complainant applied with Saraswat Co-op. Bank Ltd. branch at Vengurla for sanctioning loan to his son. Bank's Accountant advised the Complainant to bring a letter from Depot Manager of Kudal that Rs. 125 will be deducted per month from Complainant's salary and will be remitted to the Bank. The Accountant then gave a proforma of such letter to the Complainant.

3. The Corporation served chargesheet dated 19th November 1989 upon the Complainant alleging misconducts under clauses 10, 11, 12 (*b*), 22, 48 and 50 of its Discipline and Appeal procedure alleging that he unauthorisedly took out a letter-head from letter pad of the Depot Manager, got it typed illegally that the Depot Manager under takes to deduct and pay a sum of Rs. 125 per month from his salary to the Bank, then himself signed the same as a Depot Manager by putting rubber stamp of the Depot Manager and then submitted the same to the Bank. Then an enquiry took place. The Enquiry Officer held that all charges levelled against the Complainant are proved. Ultimately, he was dismissed with effect from 8th April 1991.

4. Above Complaint came to be filed on 12th April 1991 alleging that the Complainant neither applied nor obtained any loan from the Bank. Corporation's Officers pressurised him to admit the misconduct by assuring no action. In addition, He was treatened with procecution if fails to admit the minsconduct. As such, he involuntarily admitted the misconduct. The Enquiry Officer, solely relied upon his admission, found him guilty. It is therefore contened that the findings of the Enquiry Officer are perverse and his dismissal is an unfair labour practice under items 1 (a), (b), (d), (f) and (g) of Sch. IV of the M. R. T. U. and P. U. L. P. Act.

5. The corporation filed its written statement at Ex. 9 contending that the Complainant committed serious miscondcut and was required to be chargesheeted. The enquiry was fair and the charges levelled against the Complainant were duly proved. Proved misconducts were grave and serious and hence punishment of dismissal is legal. Thus, the corporation justified its action and prayed for dismissal of the complaint.

6. Learned Labour Court then framed issued at Ex. 14 and the parties went to the trial. None of the parties led oral evidence. A joint pursis Ex. C-16 was filed that they do not wish to lead oral evidence. The Complainant produeced report of junior Security Superintendent, copy of his own statement and some of the enquiry papers. The Corporation produced entire enquiry papers and also got produced all documents from management of Vengurla Branch regarding loan application made by the Complainant.

7. Learned Labour Court, on perusal of evidence and hearing both parties, held that the Complainant has admitted his guilt by statements dated 7th August 1990, 20th October 1990 theary of pressurising the Complainant to admit the misconducts is without evidence and findings of the Enquiry Officer are not perverse. It then held that proved misconducts are grave and serious and hence punishment of dismissal is not an unfair labour practice. Ultimately, it dismissed the complaint by judgment and order dated 18th May 1999. The same is challenged is this revision.

8. I heard both Advocates. Considering rival submission, following points, arise for my determination :—

(*i*) Whether finding of the Labour Court that findings of the Enquiry Officer are proper, is justifiable ?

(*ii*) Whether finding of the Labour Court that punishment of dismissal is not an unfair labour practice, is legal and proper ?

(*iii*) What order ?

9. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) Yes.

(*iii*) The revision application is dismissed.

Reasons

10. This being a revision application under section 44 of the M. R. T. U. and P. U. L. P. Act, it is not necessary to scrutinise rival contentions meticulously. The only material question is whether documents on record are incapable of supporting impugned order ? in other words, whether impugned order is perverse, or justifiable ?

11. Shri Kotnis, learned advocate representig the Complainant argued in the first phase that the Enquiry Officer has mainly relied upon Complainants statement dated 20th October 1990 and then held that the misconducts are proved. He then took me through statement dated 20th October 1990 and submitted that endorsement therein that it is voluntary one and is written as stated by the Complainant is self-eloquent. According to him, such endorsements were in anticipation of Complainants plea of pressurisation. He further added that if the statements is read as a whole and especially " between the lines " it is indicative of coercion and undue influence. As such, findings of the Enquiry Officer are perverse.

12. Shri Badadare, learned advocate representing the Corporation replied that there cannot be re-appreciation of evidence while entertaining revision u/s 44 of the M. R. T. U. and P. U. L. P. Act. The Complainant himself admitted the misconducts by two statements as well as in the enquiry also. He explained that the Complainant has categorically ratified his statement dated 20th October 1990 in the enquiry on 8th January 1991. The facts are self-eloquent. As such, findings of the Enquiry Officer cannot be held to be perverse.

13. It is not in dispute that the Complainant was in need of loan for his Son and Accountant of Saraswat Co-op. Bank asked him to bring a letter from the Depot Manager undertaking deduction and remittanced of Rs. 125 per month from his sallary. Thus, the Complainant was alone in need of such letter from the Depot Manager. It is the Complainant who alone would be benefited by such letter. It is not case of the Complainant that he is in cross-terms with the Corporation of Officer and is falsely chargesheeted. Considering such circumstances, it was the Complainant alone who must have forged letter of the Depot Manager. It is not case of the Complainant that the said letter is signed by his Depot Manager on his request, If the Complainant was really pressurised, then he ought to have pleaded accordingly in the enquiry. He was aware of the proposed action as an enquiry was already initiated against him by way of chargesheet. It was not necessary for him to ratify previous statement dated 20th October 1990 in the enquiry if really he was pressurised. The most glaring fact that he has not lead oral evidence to substantiate plea of pressurisation and coercion. In such circumstances, finding of learned labour Court that finding of enquiry Officer are well justifiable,cannot be faulted with. The facts are self-explanatory. The doctrine " Res Ipsa loguitur " is totally applicable here. Accordingly, I answer Point No. 1 in the affirmative.

14. Advocate Kotnis, argued in the second phase that the Bank did not disburse the loan to the Complainant and the Son for whom the loan was applied for, expired in the year 1995. There was no wrongful loss to the corporation. As such, punishment of dismissal *i. e.* economic death is highly disproportionate. In addition, Complainant's past record is clean and unblamished. Therefore, the Complainant was entitled to some relief for his survival.

15. Advocate Shri Badadare, replied that question of wrongful loss to the Corporation is immaterial. If the Bank would have sanctioned the loan, then the Complainant would have secured wrongful gain amount. The question of honesty and integrity is material. No prudent employer will tolerate continuance of such employee in its employment Proved misconduct cannot be said to be technical or minor one. Therefore, punishment to dismissal is legal and proper.

16. It is seen that the Complainant has committed theft of letter from the letter-pad, himself got typed a matter thereon and managed to fabricate signature and seal of the Depot Manager thereon. The question of honesty and integrity is material. No prudent employer will tolerate such dishonest act of his employee. Learned Labour Court, therefore, has rightly held that there is no unfair labour practice by the Corporation. Accordingly, I answer Point No. 2 in the affirmative and pass following order :—

Order

(*i*) The revision application is dismissed.

(*ii*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
dated the 7th October 2002.

V. D. PARDESHI,
Assiatant Registrar,
Industrial Court, Kolhapur.

INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

BEFOR SHRI C. A. JADHAV, MEMBER

REVISION APPLICATION (ULP) No. 62 of 1999—Shri Tajuddin Abdul Saudagear, H. No. 2525, Mangalwar Peth, B ward, Kolhapur—*Petitioner (Original Complainant)—V/s*—(1) The Divisional Controller, Maharashtra State Road Transport Corporation, Kolhapur Division, Kolhapur—*Opponent No. 1 (Ori. Respondent)* (2) The Hon'ble Judge, Labour Court, Kolhapur *(Opponent No. 2)*

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Shri B. D. Manolkar, Advocate for Petitioner.

Shri M. G. Badadare, Advocate for the Opponent No. 1.

Judgment

*(*dated the 30th September 2002*)*

1. This is a revision by Original Complainant challenging legality of judgment and order passed in Complaint (ULP) No. 128 of 1989 by Labour Court, Kolhapur, whereby relief of reinstatement with continuity of service and full back wages is refused by dismissing his Complaint.

2. Admittedly, present Petitioner (hereinafter referred to as 'the Complainant') was working with the present Respondent (hereinafter referred to as 'the Corporation') as a Conductor from the year 1972. The Corporation served charge-sheet dated 23rd March 1987 against him alleging misconduct under Clause-12 (b) *i. e.* fraud, dishonesty or misappropriation in connection with the business or the property of the Corporation of it's Discipline and Appeal Procedure. Then an enquiry took place. Finally he was dismissed on 4th June 1987. His both departmental appeals were also dismissed.

3. The Complainant then filed above Complaint on 8th August 1989 alleging that it was the duty of the concerned clerk while accepting cash and way-bill from him to check contents thereof. However, concerned clerk is not served with any charge-sheet. As such, there is discrimination and favouritism on Corporation's part. Besides, the enquiry is not fair and proper. The Enquiry Officer acted as a prosecutor-*cum*-Judge. Reporter's evidence is hear-say and the evidence is fabricated one. As such, the findings are perverse. It is further contended in the alternate, that alleged misconducts are minor and/or technical and punishment of dismissal considering his long service is shockingly disproportionate. Eventually, he prayed for requisite declaration of an unfair labour practice, reinstatement with continuity of service and other consequential reliefs.

4. The Corporation resisted the Complaint, by written statement Ex. C-9, contending that it was obligation of the Complainant to submit all proper details regarding sale of tickets. However, he used to show less sale of tickets and thereby missapporopriate the amount of tickets already sold. Ultimately, it was found that he actually misappropriated Rs. 10,622-60. As such, he was required to be charge-sheeted. In the enquiry sufficient opportunity was extended to him and the findings are well justifiable. Complainant's past record is not clean. Proved misconduct was serious and hence punishment of dismissal is proper. Thus, the Corporation justified its action and prayed for dismissal of the complaint.

5. The Labour Court framed issues at Ex. 10 and the parties went to the trial. None of the parties led oral evidence. The Complainant admitted fairness of the enquiry, *vide* pursis Ex.U-14. The Corporation produced entire enquiry papers alongwith Complainant's default card.

6. Learned Labour Court, on perusal of evidene and hearing both parties, held that findings are not perverse but well justifiable. It then held that the proved misconduct amounts to dishonesty. The Complainant was previously punished on eight occassions and hence, the punishment is not an unfair labour practice. Ultimately, it dismissed the complaint by Judgment and Order dated 11th February 1999. The same is challenged in this Revision.

7. I heard both sides. Considering rival submisions, following points arise for my determination :—

(1) Whether impugned decision endorsing findings of the enquiry officer as well as the punishment is justifiable ?

(2) What Order ?

8. My finding on above points, are as under :—

(1) Yes.

(2) The revision application is dismissed.

Reasons

9. This being a revision under Sec. 44 of the M. R. T. U. and P. U. L. P. Act, 1971, it is not necessary to scrutinise rival contentions meticulously. The only material question is whether documents on record are incapable of supporting impugned order ? In other words, whether impugned order is perverse or justifiable ?

10. Shri Manolkar, learned Advocate representing the Complainant tried to canvass that findings of the Enquiry Officer are based upon conjectures and surmises and unsustainable in law. Concerned clerk ought to have checked the way-bill while accepting the cash from the Complainant. But the Complainant alone is charge-sheeted. It is indicative of victimisation Advocate Shri Badadare representing the corporation replied that finding of the Enquiry Officer are based upon appreciation of evidence and are well commensurate with the standard of proof required in a domestic enquiry to establish the charges. In fact, it was the Complainant who is author of all way-bills and cannot disown his liability.

11. It is settled principle of law that a Labour Court can not sit as an appellate Court upon report and findings of the Enquiry Officer. It is seen that the Complainant purposely did not show sale of entire tickets on way-bill and deposited less amounts. He was delivered with tickets of various denominations but purposely showed less sale. Thus, all facts were within his personal knowledge and he was required to justify the same. But it is seen that he has miserable failed to do so. I, therefore, find that findings of the Enquiry Officer are well justifiable and rightly endorsed by learned Labour Court.

12. As regards punishment, the Complainant is punished in the past on eight occassions. Even otherwise, proved misconduct is grave and serious. It cannot be accepted by any stretch of imagination that the same is minor or technical one. Hon'ble Apex Court has observed in *Janata Bazar V/s Secretary, Sahakari Noukarana Sangh* reported in 2000 II CLR at page-568 that when misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employee in service. It is also observed that there is no question of considering past record in case of proved misappropriation. It is discretion of the employer to consider the same in appropriate cases but the Labour Court cannot substitute penalty imposed by the employer, in such cases. Thus, in the light of dictum of Hon'ble Apex Court, punishment of dismissal is proper and rightly endorsed by learned Labour Court.

13. In the background of above discussion, there is no merit in the revision application and it is a futile exercise on Complainant's part. Findings of the Enquiry Officer are legal and proper and punishment of dismissal is not an unfair labour practice. As such, no interference is called for, accordingly, I answer Point No. 1 in the affirmative and pass following order :—

Order

(i) The revision application is dismissed.

(ii) No order as to costs.

C. A. JADHAV,
Member
Industrial Court, Kolhapur.

Kolhapur,
dated the 30th September 2002.

IN THE INDUSTRIAL COURT, MAHARASHTRA, KOLHAPUR

CRIMINAL REVISION (ULP) No. 2 OF 1989.—Kolhapur District Bank Employees' Union, 635, C-Ward, Red Flag Building, Bindu Chowk Kolhapur—*Petitioner*—*V/s*—The Director of the Kolhapur District Central Co-operative Bank Ltd., Kolhapur *Viz.*–(1) Shri P. B. Patil, Chairman. (2) Shri Hasansaheb Miyalal Mushrif, Vice Chairman. (3) Shri Rajaram Shankarrao Desai, Director. (4) Shri Madhavrao Ishwarlal Kurne, Director. (5) Krishanrao Baburao Kurulkar, Director. (6) Shri Shivajirao *Alia* Shivagonda Patil, Director. (7) Shri Narsingrao Gurunath Patil, Director. (8) Shri Krishnarao Parasharam Patil, Director. (9) Shri Appasaheb Shantappa Chaugule, Director. (10) Shri D. T. Patil, Director. (11) Shri Balasaheb *Alia* Sarjerao Raosaheb Vichare, Director. (12) Shri D. N. Patil, Director. (13) Shri Arun Dattatraya Narke, Director. (14) Shri Annasaheb Balkrishna Padval, Director.(15) Shri Abdulgani Ibrahim Faras, Director. (16) Shri Ganpatrao Anandrao Sarnobat, Director. (17) Shri Krishnarao Rakhamajirao Desai, Director. (18) Shri Shamrao Bhiwaji Patil, Director. (19) Shri Dinkarrao Vithalrao Mudrale, Director. (20) Shri Vishwanath Shankarrao Jadhav, Director. (21) Shri Amgonda Appasaheb Patil, Director. (22) Shri Shankar Bala Patil (Kaulavkar), Director. (23) Shri Bajirao Ramrao Patil, Director. (24) Shri N. Y. Patil, Manager of the Kolhapur District Central Co-op. Bank Ltd., Kolhapur.—*Accused Persons.*—Address : The Kolhapur District Central Co-operative Bank Ltd. Head Office, Kolhapur.

In the matter of Criminal Revision u/s 42 of the M. R. T. U. & P. U. L. P. Act.

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Shri G. P. Pansare, Advocate for the revision applicant.

Shri R. L. Chavan, Advocate for the Accused.

Judgment

1. This is a Revision by Original Complainant union challenging legality of order passed below Ex. C-44 in Criminal complaint (ULP) No. 10/88 by Labour Court, Kolhapur, whereby the main complaint is dismissed on the ground that no case of contempt or breach of Industrial Court's order is made out and earlier order of issuing process was unsustainable in law.

2. Present Petitioner (hereinafter referred to as the Complainant-Union) is recognised and approved as well as representative Union for nine local areas (Talukas) of Kolhapur District under the B. I. R. Act for the Kolhapur District Central Co-operative Bank Ltd., Kolhapur (hereinafter referred to as the Bank). There is other representative Union for remaining three local areas (Talukas) of Kolhapur District namely Bank Employees' Union (hereinafter referred to as the other Union) under the Bombay Industrial Relations Act for the Bank. The other Union filed Reference (IC) No. 2 of 1988 for various demands against the Bank before the Industrial Court, Kolhapur. The Complainant Union also filed Reference (IC) No. 4 of 1988 for various demands in the same Court. Reference (IC) No. 2 of 1988 was settled and then the Court passed an award on 6th June 1988 in terms of such settlement. As per the Settlement, permanent employees were entitled to various benefits with effect from 1st January 1987. The Bank then issued circular dated 22nd June 1988 that difference of benefits with effect from 1st January 1987, as per award be paid only after furnishing an undertaking by respective emplooyee, as appended to the circular and the difference should not be paid if concerned employee does not furnish requisite undertaking or make any changes in the undertaking while furnishing the same.

3. The Complainant Union then filed complaint (ULP) No. 168 of 1988 on 6th July 1988 against the Bank in this Court, alleging various unfair labour practices under the M. R. T. U. and P. U. L. P. Act. It also filed an interim Application (Ex. U-4) under section 30 *(2)* of the M. R. T. U. and P. U. L. P. Act, whereon following ad-interim order was passed on same day :–

" The Respondent Bank is directed to pay the benefits of the award to the employees without insisting on any undertaking.

The Bank can obtain the undertaking from the workers who are willing to sign it. The amounts shall be paid to those who refuse to sign. A list of such employees shall be prepared and submitted to this Court.

The Bank is further directed not to take any other action against such employees for their refusal to sign the undertaking.

The order is however, without prejudice to the rights of the parties.

The parties shall not be entitled to claim any other benefits on the basis of this order."

4. It has come on the record that the Bank made an application (Ex. C-4) on 28th July 1988 in complaint (ULP) No. 168/88 alleging that 11 employees name in the list annexed thereto have not complied circular dated 22nd June 1988, nor communicated their refusal to accept the difference nor complaining in writing. Besides, they are purposely avoiding to accept the difference. They did not request the Bank to pay the difference without any condition. However, to obey the *ex-parte* interim order, the Bank is depositing difference of amounts payable to elevant employees, as shown in the statement annexed thereto in the Court. The Court then accepted Cheque of Rs. 50,775 from the Bank on same day.

5. The Bank then made another application (Ex. C-6) on 13th October 1988 in complaint (ULP) No. 168 of 1988, by taking the matter on Board and deposited difference of Rs. 14,985 in respect of elevant employees in the Court by reiterating its contention in previous application (Ex. C-4). The Bank then deposited Rs. 10,745 on 2nd November 1988 with permission of Court. Respective amounts were deposited towards difference of amounts payable to same elevan employees for further minths.

6. The Complainant Union then filed an application (Ex. U-6) on 2nd November 1988 in complaint (ULP) No. 168/88 that the Bank purposely did not pay difference of employments as per the award to concerned employees, deposit thereof in the Court does not amount to implementation of the interim order and Bank's such act is contempt of the interim order. It was further contended that legal action be initiated against the Bank for non-implementation of interim order. It was further clarified that the application is filed without prejudice of claiming proper relief before appropriate Court regarding contempt of the interim order.

7. The Bank then further deposited Rs. 3,678 on 8th December 1988 as difference of emoluments of same 11 employees in Complaint (ULP) No. 168, 1988, with permission of the Court.

8. The Complainant then filed impugned complaint before Labour Court, Kolhapur on 9th December 1988 alleging that *ad-interim* order passed in Complaint (ULP) No. 198/88 is not complied and it is contempt of Industrial Court under section 48 (*1*) of the M. R. T. U. and P. U. L. P. Act. It was alleged that the amounts are purposely desposited in the Court so that respective employees should not get the benefits on the interim order. It was further alleged that Bank's Directors may be unaware and hence each of them were served with notice dated 11th October 1988 intimating the interim order and were called upon to comply the same strictly. It was also alleged that the Complainant Union refused to settle the demands as settled by the other Union and therefore, interim order was purposely not complied.

9. In short, it is came of the Complainant Union that deposit of difference of emoluments in the Court does not amount to compliance of interim order. The Bank ought to have paid the amounts directly to concerned employees In addition, some amount is not deposited and some is deposted at late. Finally, the Complainant Union prayed that bank's chairman Directors and Manager (Accused Nos. 1 to 24) be punished for an offence punishable U/s 48 (1) of the M. R. T. U. and P. U. L. P. Act.

10. Learned Labour Court then examined General Secretary of the Complainant Union on oath on same day and issued an order of issuing process against all accused on 9th December 1988 on same day. It appears that many accused appeared and were released on personal bond of Rs. 500 and their personal attendence are also dispensed with, until further orders.

11. The accused then filed an application (Ex. C-44) to dispose of the Complaint on the gorund that difference of emoluments is deposited in Complaint (ULP) No. 168/88 on 28th July 1988, with permission of the Court. Further differences are deposited on 13th October 1988, 21st November 1988. and 8th December 1988. As such, there is no contempt of industrial Court's order. Besides, identical application (Ex. U-6) for contempt of Courts order is filed in Complaint (ULP) No. 168/88, identical reliefs are sought in boht procedings and hence main complaint is not maintainanble. It was further agitated that Directors of the Bank are not parties to Complaint (ULP) No. 168/88.

12. The Complainant Union objected, *vide* reply Ex. 62 that order of issuing procese against the accused, is already passed and now the complaint cannot disposed off without recording the evidence and deciding the same on merits. Application (Ex. C-44) is in the nature of defence of the accused. False and frivolus application is filed to get some order from the Court challenged the same in Higher courts and to protract further trial. Both parties produced documentary evidence in support of their contentions.

13. Learned Labour Court, on perusal of evidence and hearing both parties, observed that bank's insistance of the undertaking prior to disbursing difference of emoluments is legal and justifiable. The Complainant Union ought to have proceeded with application (Ex. U-6) filed in Complaint (ULP) No. 168/88 and deciding said application (Ex. U-6) as well as the complaint will amount to imposition of double punishment, if the Complainant Union succeeds. It further observed that, therefore, there was no necessly to file impugned complaint. It then held that difference of emoluments is deposited in Industrial Court, with permission of the Court and it does not amount to wilful dis-obedience the interim order. It then held that Chairman, Vice chairman and Directors of the Bank not parties to Reference (IC) No. 2 of 1988 as well as complaint (ULP) No. 168/88 and hence the complaint is not maintainable against them. Ultimately, it held that no case of contempt of breach of Industrial Court's order is made out, order of issuing process is unsustainable in law and disposed off main complaint by order dated 15th April 1989. The same is challenged in this revision.

14. I heard both Advocates at length. Considering rival submissions, following points arise for my determination :–

(*i*) Whether impugned order re-calling order of issuing process and then dispossing of main complaint, is justifiable ?

(*ii*) What order ?

15. My findings, on above points, are as under :–

(*i*) Yes.

(*ii*) The Criminal revision application is dismissed.

Reasons

16. It is one of the contention of the Complainant Union that the labour Court cannot and need not dispose of the complaint, after issuing order of process without recording evidence and deciding the same on merit. Shri Pansare, learned Advocate representing the Complainant Union argued that question of maintainability of the complaint cannot be inquire into after passing order of issuing process.

17. Order of issuing process is an interim order and not a judgment, it is open to the accused to plead before the Magistrate that the process against him ought not to have been issued and the Magistrate may drop the proceeding if stisfied on re-consideration of the complaint that there is no offence for which the accused could be tried. It is his judicial discretion. Order of issuing process can be varied or re-called. I am fortified in having this view as per decision of Hon'ble Apext Court in *K. M. Mathew* V/s. *State of Kerla reported in 1992 AIR (SC) at page 2206.* Such, learned Labour Court was within its jurisdiction while entertaining the application Ex. C-44 for re-calling the order of issuing process.

18. Advocate Shri Pansare, then argued that observations regarding justifiability and legality of the undertaking were totally unwarranted. In fact, it was jurisdiction of the Industrial Court in complaint (ULP) No. 168/88 to decide such aspect. Jurisdiction of the Labour Court was confirned to the extent of failure or dis-obedience of interim order passed by the Industrial Court.

19. There is substantial merit in above arguments of Advocate Shri Pansare. Learned Labour Court has travelled much beyond its jurisdiction and considered legality and justifiability of the undertaking. section 48 (*1*) of the M. R. T. U. and P. U. L. P. Act contemplates failure to comply with any order of the Court under clause (*b*) of Sub-section (*1*) or Sub-section (*2*) of section 30 of the said Act. Eventally, the controversy regarding legality and justifiability of the undertaking was sought by the Bank is not covered under section 48 (*1*) of the Act. Therefore, observations of learned Labour Court regarding legality and justifiability of the undertaking are unsustainable in law liable to be set-aside and are hereby set-aside. Learned Labour Court has also observed that concerned eleveet an employees have neither accepted the difference of emoluments nor informed anything about the same to the Bank but are avoiding to accept the amount.

20. Advocate Shri Pansare submitted that such observations of the Labour Court are without any evidence and such controversy was required to be decided on evidence. The Labour Court accepted Bank's case in *toto*. Besides, there is no question of double jeopardy. Application Ex. U-6 was filed in the Industrial Court withiut prejudice to Union's right to claim proper relief before proper Court. Therefore, such observations are also unsustainable in law.

21. It is no-body's case that Industrial Court took action against the Bank and its Directors for contempt of its interim order. On the contary, it is case of the Bank in complaint (ULP) No. 168/88 that the Complainant Union has filed a complaint before Labour Court and hence Union's Application (Ex. U-6) be rejected. Therefore, observations of the Labour Court regarding double jeopardy are unsustainable in law. Likewise, its observations that concerned elevant employees avoided to accept difference of emoluments are without evidence and unsustainable in law. Eventually, such observations are set-aside.

22. Learned Labour Court has further observed that Chairman, Vice Chairman and directors of the Bank were not parties to complaint (ULP) No. 168/88 and hence impugned complaint is not maintainable against them. Advocate Shri Pansare therefore, vehementaly argued that personal notices were sent to all accused and the interim order passed by the Industrial court was brought to them notice. As such, more fact that they were not parties to the complaint cannot exonerate them from criminal liability.

23. Learned Labour Court has relied on the decision under the B. I. R. Act, wherein, it is held that proceedings under the BIR Act can not be taken against the person who is not a party in previous proceedings. However, there is direct ruling of Bombay High Court in *M. R. Patil* V/s. *Member, Industrial Court, reported in 1996 II CLR at page 450,* under section 48 (*1*) of the M. R. T. U. and P. U. L. P. Act, wherein, it is held that section 48 (*1*) is not restrected to the person who is a party in the original complaint and takes into its fold any person who fails to comply with any order of the Court. In the present case, the Complainant Union has come with a case that individual notices were issued to all the accused under register post acknowledgment due. therefore, observations that Chairman, Vice Chairman and Directors were not parties to complaint (ULP) No. 168/88 and hence the complaint is not maintainable against them, are unsustainable in law. Eventually, those are liable to be set-aside and are hereby set-aside.

24. Advocate Shri Pansare further argued that the Complainant Union made an application Ex. 65 to direct the Bank to produce monthly wage-registers and other documents. However, no orders are passed on said application and the complaint itself is disposed off. Thus, it has resulted into miscarriage of justice.

25. As discussed above, the question of justification and legality of the undertaking sought by the Bank was beyond the jurisdiction of the labour Court. Bank's Application (Ex. C-44) was for re-calling the process and droping the complaint. As such, the same was required to be decided first. Eventually, Union's application Ex. 65 is in the eyes of law, filed. The main controversy is whether there were sufficient grounds for issuance of the process was material.

26. Advocate Shri Pansare, further argued that notices were issued to all Directors on 11th October 1988 and thereafter, the amounts are deposited in the Court. Consequently, it cannot be accepted that the interim order was fully complied. But the Labour Court totally misdirected itself in disposing of the complaint at the threshold itself. Observations in impugned order, in any case, are premature. The accused could have been acquitted if finally found not guilty. He further added that some of the accused have expired and the revision is of the year 1989 but rule of law has to be followed more fact that order dis-obeyed is of the year 1988, is of no legal consequence.

27. Advocate Shri Chavan, representing the Respondents-eccused replied that the Industrial Court directed the Bank to disburse the amount to concerned employees who refused to sign the undertaking and the parties shall not be entitled to claim any other benefits on the basis of said interim order, besides, said order was without prejudice to the parties and the notice was returnable on 28th July 1988. The controversy is of 11 employees only. The Bank deposited entire due amount of those 11 employees on 28th July 1988 in the Industrial Court and that too with permission of the Court. It is specifically stated in said application (Ex. C-4) that the amount is deposited so as to obey the interim order. Material contention of the Complainant Union is depositing the amount in Court, is that the concerned employees should not get the same. In fact, the amounts are deposited for being paid to those 11 employees and they have withdrawn those amounts. There is no mensrea or *malafides* on Bank's part to disobey the interim order. Had it been so, the amounts would not have been deposited. Besides, the amounts are deposited four times with permission of the Court but the Complainant Union never objected it at that time. Thus, the Complainant Union was well a were that the interim order is obeyed. Learned Labour Court found on the face of the record that the interim order was obeyed and hence rightly disposed off the complaint.

28. Reference (IC) No. 2 of 1988 was settled and an award was passed in terms of settlement on 6th June 1988 and permanent employees were entitled to revised pay scales and other emoluments from 1st January 1987. Thus, the past difference was deposited by the Bank in complaint (ULP) No. 168 of 1988 on 28th July 1988 and that too with permission of the Court. The difference due is on 22nd June 1988 (data of issuing circular of undertaking) was till 31st May 1988. The same is fully deposited in Court on 28th July 1988. Consequently, it cannot be accepted that the amount deposited was short. Further amounts are deposited in the Court after becoming due. It is specifically contended in all those applications seeking permission to deposit all amounts, that the amounts are deposited to obey *ex-parte* interim order. The Complainant Union has also not objected at any time when the Bank deposited the amount in Court. Admittedly now the same is withdrawn by concerned employees. Thus, it has to be accepted that the amounts were deposited for being paid to concerned eleven employees. Consequently, it cannot be accepted that the Bank purposely deposited the amount in Court so that concerned employees should not get the amount. On the contrary, the inference is that the amounts were deposited for being payable and to be paid to those 11 employees. Such inference is coupled with the fact that the Complainant Union never objected the Bank to deposite the amounts in Court further goes to show that there is no wilful dis-obedience of the interim order.

29. While dealing with contempt of Labour or Industrial Court, it is necessary to find out whether the breanch of the order was a wilful dis-obedience. The Bank has deposited entire amount then due in the Industrial Court with a contention that the same is deposited so as to obey the interim order. Eventually, bank's such conduct cannot be styled as wilful dis-obedience of interim order. It is no-body's case that the Bank did not permit the respective employees to withdraw the amount deposited in the Court. In fact, now they have withdrawn the amounts. All such circumstances are well indicative of obedience of the interim order. As a converse, there is no wilful dis-obedience of the interim order.

30. I perused original order of issuing process. The same is without reasons, mechanical one and without application of mind. A direct order issuing process to all accused is made. Therefore, the Labour Court, on re-consideration of the complaint rightly found that there were no sufficient ground for proceeding further and rightly decided to recall the process. No doubt, certain observations of learned Labour Court, as discussed above, are unsustainable and set-aside. However, observations that deposit of due amount in the Industrial Court does not amount to dis-obedience of interim order, are justifiable. As such, final order of re-calling the process and disposing of main complaint needs to be confirmed. Accordingly, I answer Point No. 1 in the affirmative and pass the following order :—

Order

(i) The Criminal Revision Application is dismissed.

(ii) Parties shall bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 25th September 2002.

(Sd.) XXX
Assistant Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA, KOLHAPUR

REVISION APPLICATION (ULP) No. 167 OF 1999.—(1) Collector and President, Rajarshi Shahu Chhatrapati Memorial Trust, Shahu Smarak Bhavan, Dasra Chowk, Kolhapur. (2) Secretary, Rajarshi Shahu Chhatrapati Memorial Trust, Kolhapur. (3) Mayor, Kolhapur Municipal Corporation, Kolhapur, Trustee, Rajarshi Shahu Chhatrapati Memorial Trust, Kolhapur. (4) President, Z. P. Kolhapur, Trustee Rajarshi Shahu Chhatrapati Memorial Trust, Kolhapur. (5) Shri Baburao Abasaheb Dharwade, Trustee, Arunoday Bungalow, Ideal Co-op. Hsg. Society, Sagarmal, E-Ward, Kolhapur. (6) Shri Ramchandra Krishnaji Kanbarkar, R/o. Nale Colony, Near Kalmba Road, Kolhapur, Trustee-Rajarshi Shahu Chhatrapati Memorial Trust, Kolhapur. (7) District Superintendent of Police, Kolhapur, Trustee-Rajarshi Shahu Chhatrapati Memorial Trust, Kolhapur. (8) Executive Engineer, Public Works Division, Trustee, Rajarshi Shahu Chhatrapati Memorial Trust, Kolhapur.—*Petitioners—V/s*—Smt. Shobha Marutirao Gaikwad, Plot No. 14, Powar Colony, Near Mohite Park, Radhanagari Road, Kolhapur—*Respondent.*

In the matter of revision u/s 44 of the M. R. T. U. and P. U. L. P. Act, 1971.

CORAM.— Shri C. A. Jadhav, Member.

Advocates.— Shri Y. G. Salokhe, Advocate for the Petitioners.

Shri Ganesh Waskar, Advocate for the Respondent.

Judgement

1. This is a revision by Original Respondents challenging legality of judgment and order passed in complaint (ULP) No. 304 of 1998 by Labour Court. Kolhapur, whereby, they are directed to reinstate their Liabrarian on her previous post with continuity of service and full back wages.

2. Admittedly, present Petitioners are Trustees and Office Bearers of Rajarshi Shahu Chhatrapati Memorial Trust, Kolhapur. The Trustees published an advertisement in Daily Newspaper "Dainik Pudhari" on 6th January 1997 that it wishes to appoint a Librarian on honourary basis and retired liabrarion will be given preference. Present Respondent (hereinafter referred to as the Complainant) then made an application, was selected and then appointed as Librarian with effect from 1st April 1997 on honorarium of Rs. 1500 per month. She then started working from 1st April 1997. She was asked to furnish a bond of Rs. 10,000 by notice dated 30th May 1997 as provided in the Appointment order itself. The Trustees then terminated her services by letter dated 29th August 1998 with effect from 30th September 1998.

3. It is case of the Complainant that she was permanently appointed on the post of Librarian, put continous service of more than 240 days and hence is now deemed to be permanent under the model standing orders framed under the Industrial Employment and Standing Orders Act. As such, her termination is an unfair labour practice under items 1 (a), (b), (d) and (f) of Sch. IV of the M. R. T. U. and P. U. L. P. Act. She has prayed for reinstatement with continuity of service and full back wages.

4. The Trustees and Office Bearers of the Trust filed their written statement at Ex. C-11 and traversed some of the material allegations made by the Complainant. They contended, at the outset that the Trust is a public Charitable Trust registered under the Bombay Public Trusts Act and is not an 'industry' as defined under section 2 (j) of the I. D. Act. They further contended that the Complainant was appointed as honorary Librarian and that too on honurarium of Rs. 1500 per month. As such, there was no relationship of master and servant and the Complainant is not an 'employee' as defined under section 3 (5) of the M. R. T. U. and P. U. L. P. Act. Eventually, the complaint is not maintainable. It is further contended that no sufficient work was available in the liabrary and hence service of the Complainant were terminated. Thus, the Respondents justified their action and prayed for dismissal of the complaint.

5. The Labour Court then framed issues at Ex. O-20 and the parties went to the trial. The Complainant produced her appointment and termination orders. She then examined herself at Ex. U-21. On behalf of the Trust, one Shri Mohan Marutirao Shinde was examined at Ex. C-24. Audit report and constitution of the Trust were produced with list Ex. 26. The Labour Court, on perusal of evidence and hearing both parties, held that the Complainant is 'an employee' and the Trust is 'an industry' as defined under the I. D. Act and hence the complaint is maintainable. It then held that Complainant's termination is without compliance of section 25 F of the I. D. Act and hence is an unfair labour practice under items 1 (b) and (f) of Sch. IV of the M. R. T. U. and P. U. L. P. Act. Finally, it allowed the complaint, as above, by judgment and order dated 20th September 1999. The same is challenged in this Revision.

6. I heard both Advocates. Considering rival submissions, following points arise for my determination :—

(*i*) Whether impugned finding that the Complainant is 'an employee' and the Respondent Trust is 'an industry' as defined under the I. D. Act, is legal and proper ?

(*ii*) Whether impugned finding that Complainant's termination is an unfair labour practice, is legal and proper ?

(*iii*) What order ?

7. My findings, on above points, are as under :—

(*i*) Yes.

(*ii*) Yes.

(*iii*) The Revision Application is dismissed.

Reasons

8. Shri Salokhe, Learned Advocate representing the Trust argued that Complainant's application dated 10th January 1997 clearly says that she is willing to work honorarily and willing to accept honorarium as may be offered. Previously she was getting Rs. 4000 per month while working at Nipani. Therefore, it cannot be said that she is 'an employee' as defined under the M. R. T. U. and P. U. L. P. Act. Besides, she was appointed on honourarily and has no legal right to challenge the termination. In support of his arguments, he relied on decision in *Giriraj Kishore and another V/s State of U. P. and Another reported in 1991 (81)* F.L.R. at page 88. He then tried to canvas that the Trust is not an ' industry ' as defined under the I. D. Act.

9. Shri Waskar, Learned Advocate representing the Complainant replied that the Complainant was appointed as full time Librarian and was doing work of perennial nature. Complainant's designation is immaterial but the duties are material. There are about 4000 books in Trust's Library which are read by the members. As such, there is relationship of master and servant and the Complainant is an 'employee'. For that end, he relied on the decision in *Dharangadhar Chemical Works Ltd. V/s State of Sourashtra and Ors. reported in AIR 1957 SC at* page 264. He further added that Shri Gajanan Maharaj Sansthan as well as Balaji Temple of Tirupati is held as Industry. Therefore, finding of the Labour Court is legal and proper.

10. Complainant's appointment order dated 29th March 1997 no where specifies time and duty hours. She has stated in her application dated 7th October 1997 that she is working from 11 a. m. to 6 p. m. and should be appointed as full time Librarian and the honorarium may be increased. Later on, she was directed to work from 2 p. m. to 6 p. m. There are about 4000 books in the library. There is no other librarian. Thus, it can be well said that the Complainant accepted the job of Librarian for getting some remuneration. Her duties are permanent one as the library is still functioning. It is no-body's case that post of Librarian never existed. Previously, library work was looked after by the Accuntant and now by the Witnees Shri Shinde. The very act of demanding bond of Rs. 10,000 from the Complainant establishes that the Trust had supervision and control upon the Complainant. As such, finding of the Labour Court that the Complainant is covered by the definition of workman under section 2 (s) of the I. D. Act, is legal and proper.

11. As regards plea of ' industry ' it has come on record that the Trust has 8 permanent employees and its investment is to the tune of Rs. 30 lakhs. It has Mini Theatre, Conference Hall and a big Hall named as 'Kaladalan'. Sumptuous rent is received. The Trust is rendering services to the society and its Library is a public library. There is income from the library also. In such circumstances, Learned Labour Court has rightly held that triple tests laid down in Bangalore Water Supplly and Sewarage Boards case are fulfilled. Eventually, the finding that the Trust is an ' industry ' as defined under section 2 (j) of the I. D. Act is also legal and proper. Accordingly, I answer point No. 1 in the affirmative.

12. It is not in dispute that the Complainant was in employment of the Trust as Librarian from 1st April 1997 till 30th September 1998. It is not case of the Trust that the Complainant has not completed 240 days' service. In fact, she has rendered continous service of more than 240 days as contemplated under section 25 B of the I. D. Act. Learned Labour Court has, therefore, rightly held that the termination is without compliance of secition 25 F of the I. D. Act, and is an unfair labour practice. Accordingly, I answer Point No. 2 in the affirmative.

13. It is not case of the Respondent Trust that the Complainant was in gainful employment after termination. As such, there were no exception to deviate from the general principle that reinstatement follows full back wages. I, therefore, find that Learned Labour Court was well justified in granting reinstatement with continuity of service and full back wages.

14. To summarise, there is no perversity or arbitrariness in the impugned decision. On the contrary, there is every substance in its reasoning. Eventually, no case is made out for interfernce under section 44 of the M. R. T. U. and P. U. L. P. Act. Consequently, the Revision Application is liable to be dismissed.

15. Finally, I pass following order :-

Order

(*i*) The Revision Application is dismissed.

(*ii*) Parties to bear their own costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 16th September 2002.

V. D. PARDESHI,
Assistant Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 753 OF 2001.—(1) Rajaram Tukaram Patil, R/o 10/586, Behind Anna Ramgonda School, Ichalkaranji, (2) Ashok Vishwanath Todkar, R/o 7/319, In front of KDCC-Bank, Ichalkaranji, (3) Suresh Kallu Khot R/o, 4/127, Tilak Road, Ichalkaranji, (4) Gajanan Yashwant Jagdale R/o 24/746, Shahapur Road, Solage Mala, Ichalkaranji, (5) Sanjay Subhash Rendalkar, R/o 16/63, Near Bumb Bldg, Ichalkaranji, (6) Shrikant Sitaram Nalavade, R/o 3/401, Near Anant Singh Photo Studio, Zenda Chowk, Ichalkaranji, (7) Babasaheb Rajaram Desai, Lokmanya Nagar, Korochi, Tal. Hatakanagale, Kolhapur. (8) Tukaram Yamaji Naike, R/o Opp. Deccan, Jawaharnagar, Ichalkaranji, (9) Appasaheb Sitaram Nalavade, R/o 3/401, Near Anant Singh Studio, Ichalkarnji, (10) Sitaram Bapu Patil, R/o 4/278, Near Vitthal Mandir. Ichalkaranji, (11) Ashok Vasant Kamat, R/o 6/426, Near Pant Maharaj Balekundri Temple, Mangalwar Peth, Ichalkaranji, (12) Shivaji Shankar Mane, R/o 14/165, Hulgeshwari Road, Mill, Ichalkaranji. (13) Murlidhar Ramchandra Varude, R/o 16/697, Katkar Galli, Ichalkaranji. (14) Hindurao Govind Bhujawdkar, R/o 3/152, Jay Bhavani Road, Ichalkaranji, (15) Somnath Damodhar Tahmankar, R/o 3/694, Zenda Chowk, Ichalkaranji—*Complainants—V/s*—(1) The Administrator, The Deccan Co-op. Spinning Mill Ltd., Ichalkaranji, Dist. Kolhapur—*Respondent.*

In the matter of Complaint U/s 28 (1) read with items 9 and 10 of Sch. IV of the M. R. T. U. and P. U. L. P. Act.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri N. S. Saraf, Advocate for the Complainants.

Respondent absent.

Judgments

This is a complaint under section 28 (1) read with Iteans 9 and 10 Sch. IV of the M. R. T. U. and P. U. L. P. Act.

2. It is case of the Complainants that they are in employment of Respondent No. 1 Spinning Mill since many years. They are "workman" and the Spinning Mill is " an industry " as defined under the I. D. Act. Respondent No. 2 *i. e.* Maharashtra State Co-operative Bank Ltd. has financial control upon the Spinning Mill and hence is arrayed as Respondent. It is alleged that production of the Spinning Mill was deliberately reduced by its Management and it was almost stopped from 28th March 2000 In fact, they were willing to work and attended every day to work. However, no work was provided to them. Now Government has appointed an Administrator for better management of the Mill but there is no positive progress. The Mill has neither declared lay off nor a lock out or closure. It is under statutory obligation to pay wages to them as they are willing to work. No wages are paid from 1st May 2000 to 31st July 2001 and details thereof are given in Annexure 'A' of the Complaint. According to the Complainants, non-payment of due wages despite there willingness to work, is an unfair labour practice. Finally they have claimed requisite declaration of an unfair labour practice direction to pay due wages to them and go on paying further wages every month and other conseqential reliefs.

3. The Complainants filed pursis (Ex. U-14) to delete name of Respondent No.2 and then Respondent No.2 name was deleted.

4. The Administrator of Respondent No. 1 apppeared on 11th January 2000 and sought time to file Vakalatnama and say, however, failed despite ample opportunity Eventually, the complaint proceeded without his written statement.

5. Now, following points arise for my determination :—

(*i*) Do the Complainants prove that they were willing to work from 1st May 2000 to 31st July 2001 and Respondent No. 1 has failed to provide work to them and not paid their wages ?

(*ii*) What order ?

6. My findings, on above points, are as under :–

(*i*) Yes.

(*ii*) The complaint is partly allowed.

Reasons

7. The Complainants have filed affidavit (Ex. U-3) of complainant No. 1. They have also filed copies of their attendance cards and pay slips. The Administrator has failed to file say or written statement and thus has indirectly admitted all averments in the complaint. Complainant No. 1 has put on oath in support of contentions in the complaint. His such affirmation stands un-rebutted. There is no reason to disbelieve him especailly, when the Administrator has not countered the same. Averments in the complaint are supported by attendance cards and pay-slips. I, therefore, hold that the Complainants have proved that they were willing to work, were not provided with work and Respondent No. 1 has failed to pay their wages. No doubt, the Complainants have not worked physically. But they were attending the Mill to work and their attendance was marked. As such, Respondent No. 1 is under statutory obligation to pay their wages for requisite period. Accordingly, I answer Point No. 1 in the affirmative.

8. Before concluding the judgment, I must state that I have decide the complaint as per averments of the Complainants. Later developments, if any cannot be planted or foistered upon the Complainant's on the basis of personal knowledge. Shri Saraff learned Advocate representing the Complainants rightly submitted that the Complainat has to be decided as it is. The Complainants have prayed for direction to pay further wages. Considering peculier facts and circumstances and facts of this case no such blanket direction can be given.

9. Finally, I pass following order :–

Order

(*i*) The complaint is partly allowed.

(*ii*) It is declared that the Respondent No. 1 indulged into unfair labour practices under item 9 of Sch. IV of the M. R. T. U. and P. U. L. P. Act.

(*iii*) Respondent No. 1 is directed to cease and desist from engaging in such unfair Labour practice.

(*iv*) Respondent No. 1 is directed to pay due wages to the Complainants as if they have physically worked, for the period from 1st May 2000 to 31st July 2001 within one month from to-day.

(*v*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
dated the 30th September 2002.

(Sd.) XXX
Assistant Registrar,
Industrial Court, Kolhapur.

BEFORE THE INDUSTRIAL COURT, MAHARASHTRA AT KOLHAPUR

COMPLAINT (ULP) No. 455 of 2001—(1) Waman Murlidhar Kulkarni, R/o 1/2, Narsoba Katta, Ichalkaranji, (2) Shoukat Mohaman Bagwan, R/o 10/99, Laykar Galli, Ichalkaranji, (3) Sudas Shivappa Dhapale, R/o 22/534, 3rd Lane, Ganeshnagar, Ichalkaranji, (4) Balkrishna Vyankatesh Joshi, R/o 21/162, Near Mahadeo Temple, Gaobhag, Ichalkaranji, (5) Chandrakant Ramu Ambi, R/o 1/48, Ambi Galli, Ichalkaranji, (6) Virupaksha Balvant Dasare, R/o Gajanan Housing Society, Plot No. 277, At Post Tardal, Tal. Hatakanagale, Kolhapur, (7) Prakash Shivappa Dhapale,Gajanan Housing Society, Plot No. 278, At Post Tardal, Tal. Hatakanagale, Kolhapur, (8) Kashinath Sidhappa Kolekar, R/o 7/78, Behind Govindrao High School, Ichalkaranji, (9) Ramchandra Bhimrao Magdum, R/o Mardane Mala, Kolekar Chawl, Ichalkanji, (10) Pandurang Ganpat Chavan, R/o Ganeshnagar, 1st Galli, Opp. Savant Process, Ichalkaranji, (11) Gajanan Shankarrao Gurav, R/o 1/436, Gaonbhag, Ichalkaranji, (12) Maruti Krishna Kamble, R/o Gajanan Graha Nirman Housing Society, Plot No. 233, At Post Tardal, Tal. Hatakanagale, Dist. Kolhapur, (13) Sikandar Babalal Arab, R/o 6/240, Sangli Vesh, Ichalkaranji, (14) Appaji Krishna More, R/o G. K. Nagar, PL No. 267, At Post Tardal, Tal. Hatakanagale, Dist. Kolhapur, (15) Tukaram Bhikaji Kinekar, R/o 24/464, Dattanagar, Shahapur, Ichalkaranji—*Complainants—V/s*—(1) The Administrator, The Deccan Co-op. Spinning Mills Ltd., Ichalkaranji, Tal. Hatakanagale, Dist. Kolhapur—*Respondent.*

In the matter of Complaint u/s 28 (1) read with items Nos. 9 and 10 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, 1971.

CORAM.— C. A. Jadhav, Member.

Advocates.— Shri N. S. Saraf, Advocate for the Complainants.

Shri S. L. Pise, Advocate for the Respondent.

Judgement

This is a Complaint under section 28 (*1*) read with items 9 and 10 Sch. IV of the M.R.T.U. and P.U.L.P. Act.

2. It is case of the Complainants that they are in employment of Respondent Spinning Mill since many years. They are "workman" and the Spinning Mill is an " industry " as defined under the I. D. Act. It is alleged that production of Spinning Mill was deliberately reduced by its management and it was almost stopped from 28th March 2000. In fact, they were willing to work and attended every day to work. However, no was work was provided to them. Now, Government has appointed an Administrator for better management of the Mill but there is no positive progress. The Mill has neither declared lay off nor a lock out or closure. It is under statutory obligation to pay wages to them as they are willing to work. No wages are paid from 1st May 2000 to 28th February 2001, and details thereof are given in Annexure 'A' of the Complaint. According to the Complainants, non-payment of due wages despite their willingness to work, is an unfair labour practice. Finally, they claimed requisite declaration of unfair labour practice, direction to pay due wages to them and go on paying further wages every month and other consequential reliefs.

3. Mills' Administrator appeared on 6th April 2001 through his Advocate and sought time to file say. However, failed despite ample opportunity. Eventually, the complaint proceeded without its written statement.

4. Now, following points, arise for my determination.

(*i*) Do the Complainants prove that they were willing to work from 1st May 2000 to 28th February 2001, the Respondent filed to provide work to them and not paid their wages ?

(*ii*) What order ?

5. My findings, on above points, are as under :–

(*i*) Yes.

(*ii*) The complaint is partly allowed.

Reasons

6. The Complainants have filed Affidavit (Ex. U-20) of Complainant No. 1. They have also filed copies of their attendance cards and pay slips. The Administrator has failed to file say or written statement and thus has indirectly admitted all averments made in the complaint. The Complainant No. 1 has put on oath in support of contentions in the complaint. His such affirmation stands un-rebutted. There is no reason to disbelieve him, especailly when the Administrator has not countered the same. Averments in the complaint are supported by attendance cards and pay-slips. I, therefore, hold that the complainants have proved that they are willing to work, not provided with work and the Mill has failed to pay wages to them. No doubt, the Complainants have not worked physically. But they were attending the Mill for work and their attendance was marked. As such, the Respondent is under statutory obligation to pay their wages for requisite period. Accordingly, I answer point No. 1 in the affirmative.

7. Before concluding the judgment, I must state that I have to decide the complaint as per averments of the Complainants. Later developments, if any, cannot be planted or foistered upon the Complainants on the basis of personal knowledge. Shri Saraf learned Advocate representing the Complainants rightly submitted that the complaint has to be decided as it is. The Complainants have prayed for direction to pay further wages. Considering pecualiar facts and circumstances of this case, no such blanket direction can be given.

8. Finally, I pass following order :–

Order

(*i*) The complaint is partly allowed.

(*ii*) It is declared that the Respondent has indulged into an unfair labour practice under item 9 of Sch. IV of the M. R. T. U. and P. U. L. P. Act.

(*iii*) The Respondent is directed to cease and desist from engaging in such unfair labour practice.

(*iv*) The Respondent is directed to pay due wages to the Complainants, as if they have physically worked, for the period from 1st May 2000 to 28th February 2001 within one month from today.

(*v*) No order as to costs.

C. A. JADHAV,
Member,
Industrial Court, Kolhapur.

Kolhapur,
Dated the 30th September 2002.

V. D. PARDESHI,
Assistant Registrar,
Industrial Court, Kolhapur.

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